



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 04 जनवरी, 2020/14 पौष, 1941

हिमाचल प्रदेश सरकार

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचना

शिमला-2, 30 दिसम्बर, 2019

संख्या: आई.पी.एच.-बी(एच)1-30/2019-चम्बा.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः फिन्ना सिंह मध्यम सिंचाई परियोजना भटियात, जिला चम्बा व तहसील नूरपुर, जिला कांगड़ा के निर्माण हेतु भूमि अर्जित करनी

अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा-11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस उपक्रम में कार्यरत सभी अधिकारियों, कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप-धारा द्वारा अपेक्षित अथवा अनुमत अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति, जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो, तो वह इस अधिसूचना के प्रकाशित होने के 60 (साठ) दिनों की अवधि के भीतर लिखित रूप में कलैक्टर कांगड़ा के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र बीघा में
चम्बा	भटियात	मौजा परछोड़	1071	00-16-00
			1072	00-01-00
			1073	01-11-00
			1350 / 1063	00-02-12
			1352 / 1064	00-01-04
			1226 / 383	00-08-00
			1228 / 458	00-01-00
			कित्ता-7 ..	03-00-16

आदेश द्वारा,
हस्ताक्षरित / -
सचिव (सिंचाई एवं जन स्वास्थ्य)।

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 29th July, 2019

No. Shram(A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding

Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment, Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	792/16	Hans Raj	E.E. HPPWD, Nurpur & others	01-04-2019
2.	867/16	Surit Ram	E.E. HPPWD, Nurpur & others	01-04-2019
3.	474/16	Gami	E.E. HPPWD, Nurpur & others	01-04-2019
4.	122/14	Sanjeevan Kumar	M.D. M/s GVK EMRI	02-04-2019
5.	55/16	Mohinder Singh	E.E. I&PH, Dalhousie	04-04-2019
6.	58/16	Ramesh Kumar	E.E. I&PH, Dalhousie	04-04-2019
7.	346/15	Chain Singh	E.E. HPPWD, Chamba	04-04-2019
8.	56/16	Kewal Krishan	E.E. I&PH, Dalhousie	05-04-2019
9.	53/16	Karmo @ Karam	E.E. I&PH, Dalhousie	05-04-2019
10.	122/17	Rajinder Kumar	D.F.O. Suket	09-04-2019
11.	268/14	Amrit Kaur	M.D. M/s Vinayak Eyes Hospital	10-04-2019
12.	886/16	Harish Kumar	E.E. HPPWD, Mandi	16-04-2019
13.	731/16	Biri Singh	E.E. HPPWD, Mandi	16-04-2019
14.	171/17	Satya Devi	D.F.O. Jogindernagar	16-04-2019
15.	54/16	Kishan Pal	E.E. I&PH Dalhousie	16-04-2019
16.	57/16	Tilak Raj	E.E. I&PH Dalhousie	16-04-2019
17.	438/15	Surinder Bhandari	B.M.O. Mahakal	17-04-2019
18.	625/16	Suresh Kumar	M.D. HPFC Ltd. & others	18-04-2019
19.	799/16	Nek Ram	Pr. CCF	22-04-2019
20.	294/15	Khem Singh	E.E. I&PH Mandi	22-04-2019
21.	550/15	Koushalya Devi	E.E. HPPWD, Dharampur	22-04-2019
22.	581/16	Jai Chand	E.E HPPWD, Sundernagar	23-04-2019
23.	95/13	Pritam Chand	M.D. Crest Steel & Power	29-04-2019
24.	167/17	Ramta Devi	D.F.O. Jogindernagar	29-04-2019

25.	168/17	Sumna Devi	D.F.O. Jogindernagar	30-04-2019
26.	584/16	Roop Lal	E.E. HPPWD, Sundernagar	30-04-2019
27.	88/17	Chaman Lal	E.E. HPPWD, Bharmaur	30-04-2019
28.	376/16	Kuldeep	E.E. HPPWD, Bharmaur	30-04-2019
29.	336/16	Chain Singh	E.E. HPPWD, Bharmaur	30-04-2019
30.	796/16	Kali Dass	Pr. CCF & Anr.	30-04-2019
31.	795/16	Sudershna Kumari	-do-	29-04-2019
32.	870/16	Liyakat Ali	Principal Govt. Engineer College	10-04-2019

By order,
JAGDISH CHANDER SHARMA, IAS
Principal Secretary (Lab. & Emp.).

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 792/2016
Date of Institution : 19-11-2016
Date of Decision : 01-04-2019

Shri Hans Raj s/o Shri Biro Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P.
. .Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
 2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P.
- . .Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Hans Raj s/o Shri Biro Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during January 1986 by (1) the

Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (2) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as Beldar and has raised his industrial dispute after more than 25 years *vide* demand notice dated nil received in the Labour Office, Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. He had worked under the various muster-rolls. HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Bakshi Ram, Chuni Lal, Harnam Singh, Kartar Singh and Mango Ram. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be reengaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit".

3. On notice, the respondents appeared. Only respondent No. 1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1985 in HPPWD Division Nurpur. It is also denied that the petitioner was disengaged by

the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1986 upto 31.1.1986. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No. 1 had reengaged workers on 25.5.2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work on 31.3.196, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

- (1) Whether termination of services of the petitioner by the respondents during January 1986 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? . . .*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Hans Raj examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue Nos.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Hans Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* Government notification No. PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had worked only for a month in January 1986 in between the years 1985 and 1990. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster-rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster-rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged-store-clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1985 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January 1986 and that he had worked intermittently upto 31.01.1986. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had worked with the department for a month in January 1986 only in between the years 1985 and 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent no.2 in the month of January 1986 for the first time as a daily waged beldar and he had worked as such upto 31.01.1986. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1985 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 31 days in the year 1986. Thus, in his total service for a period of about one month in between 01.01.1986 to 31.01.1986, he had only worked for 31 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Hans Raj (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No. 1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No. 2 in the month of January 1986. So, as per the own testimony of this witness of the petitioner, he was senior to him. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No. 1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement.

It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in February 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there uptil November 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18.1.2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 uptil January 2009, as is evident from the copy of her mandays chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3

39. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

40. Not pressed.

Relief :

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 867/2016
Date of Institution : 26-11-2016
Date of Decision : 01-04-2019

Shri Surit Ram s/o Shri Som Raj, r/o Village Sunera, P.O. Korpai, Tehsil Nurpur, District Kangra, H.P. *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Surit Ram s/o Shri Som Raj, r/o Village Sunera, P.O. Korpai Tehsil Nurpur, Distt. Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P. and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. from October 1989 who had worked on daily wages basis as Beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer, Kangra at Dharamshala on 13-06-2011, without complying with the provisions of the Industrial Disputes Act,

1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1984 in HPPWD Sub-Divisions-I and II, Nurgpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. He had completed more than 240 days in 12 calendar months from the date of his retrenchment. HPPWD Division Nurgpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Chaman Lal, Des Raj Sharma, Ashok Kumar, Chain Singh and Prithi Singh, while Junior Engineer was Mr. Sood. More than 1000 workers were engaged for a number of years by HPPWD Division Nurgpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit".

3. On notice, the respondents appeared. Only respondent No. 1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1984 in HPPWD Division Nurgpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wagger by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January 1986 uptil October 1989. He had not completed 240 days in every calendar year (excluding the year 1987 *i.e.* 294½ days and 1988 *i.e.* 341 days). The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur

was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No. 1 had re-engaged workers on 25-5-2010. Infact workers were re-engaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in October, 1989, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

- (1) Whether termination of services of the petitioner by the respondents during October 1989 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? . . .*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Surit Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed

Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹1,00,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues Nos. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Surit Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* Government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondents. Volunteered that, he had worked regularly from the year 1984 upto the year 1990. He denied that from the year 1986 upto the year 1989 he had worked intermittently. He denied that he had never worked in the years 1984, 1985 and 1990. He further denied that neither he was given breaks nor disengaged by the department. It was also denied by him that no juniors to him had been kept at work. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster-rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1984 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January, 1986 and that he had worked intermittently upto October, 1989. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had never worked with the department for the years 1984, 1985 and 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such upto October, 1989. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1984 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. It was next contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

35. Section 25-B of the Act defines "continuous service". In terms of Sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in the year 1984 and his services were retrenched in the year 1990 and during the period between 1984 to 1990, he had worked for a period of more than 240 days. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatt Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employer/respondents to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. At the risk of repetition, per the mandays chart copy of which is Ex. RW1/H, the petitioner had initially been engaged in January, 1986 as a daily wager and he had worked upto October 1989. As per the reference the

services of the petitioner were terminated in October 1989. It was the contention of the respondents that they had not terminated the services of the petitioner, but he had abandoned the work. However, this plea of abandonment of the respondents has already been negated by me above. As per the mandays chart Ex. RW1/H, the petitioner had worked for 213½ days in the year 1986, 294½ days in the year 1987, 341 days in the year 1988 and for 210 days in the year 1989. Thus, in his total service for a period of more than three years in between January, 1986 to October, 1989, he had only worked for 1059 days. Be it recorded here that the petitioner had worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as October, 1989. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had worked for 240 days preceding twelve calendar months from date of his termination. It is evident from the mandays chart that from October, 1988 uptil September, 1989, the petitioner had worked for 272 days *i.e.* for 29 days in the month of October, 29½ days in the month of November, 28½ days in the month of December for the year 1989 and 29 days in the month of January, 26 days in the month of February, 26 days in the month of March, 4 days in the month of May, 28 days in the month of June, 15½ days in the month of July, 26½ days in the month of August and 30 days in the month of September for the year 1989. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under Section 25-B of the Act. Thus, it was required of the respondents to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondents that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

37. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

“25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”*

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the

workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

.....

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

38. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

39. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Parmodh Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No. 1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No. 1 in the year 1984-85, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No. 2 in the month of January, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to him. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No. 1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of ‘last come first go’ had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

40. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub-Division No. 1 HPPWD, Banikhet and that she had continued to work as such there uptil November, 1988.

Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

41. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

42. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

43. The learned Assistant District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. Vs. Dilu Ram*** (CWP No.95/2000 decided on 26-8-2004) wherein it was *inter alia* held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)."

44. In ***Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

45. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Kangra at Dharamshala appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-1/85 (Lab)ID/2014/Kangra, dated 21st November, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

46. In case titled as *Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer Vs. Kuberbhai Kanjibhai* **2019 (160) FLR 651**, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another Vs. Satish Kantilal Amerelia* **2018 (156) FLR 266 (SC)** it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. Vs. Raj Kumar*, **2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 1059 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1989, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty one years** *i.e.* demand notice was given in the year 2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 43 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

47. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award,

failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondents.

Issue No. 3 :

48. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

Relief :

49. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of `1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 474/2016
Date of Institution	: 22-8-2016
Date of Decision	: 01-04-2019

Shri Gami s/o Shri Sawan Deen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P. *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Gami s/o Shri Sawan Deen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during May, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. He had worked under the various muster rolls. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Balak Ram, Ramesh, Girdhari Lal and Mehar Lal, while Junior Engineers were S/Shri Kamal Kant and Kaundal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from

where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No. 1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1985 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* September, 1986 upto May, 1990. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No. 1 had re-engaged workers on 25-5-2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in May, 1990, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, i.e. after about 21 years.

In these circumstances, respondent no.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has re-ziterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

- (1) Whether termination of services of the petitioner by the respondents during May, 1990 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? . . .*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Gami examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated

4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue Nos. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Gami (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had worked only for the months of September, 1986, January, 1987 to August, 1987 and from February, 1990 to May, 1990 in between the years 1985 and 1990. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1985 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* September, 1986 and that he had worked intermittently upto May, 1990. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had worked with the department for the months of September, 1986, January, 1987 to August, 1987 and from February, 1990 to May, 1990 only in between the years 1985 and 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of September, 1986 for the first time as a daily waged beldar and he had worked as such upto May, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1985 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 22 days in the year 1986, 177 days in the year 1987 and 69 days in the year 1990. Thus, in his total service for a period of about four years in between September, 1986 to May, 1990, he had only worked for 268 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has

been given in para 3 of the statement of claim. Shri Gami (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No. 2 in the month of September, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to him. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No. 1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

39. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

40. Not pressed.

Relief :

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 122/201
Date of Institution : 06-3-2014
Date of Decision : 02-04-2019

Shri Sanjeevan Kumar s/o Shri Jagdish Chand, r/o Village Rihalpura, P.O., Tehsil & District Kangra, H.P. . . *Petitioner.*

Versus

1. The Employer, M/s GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office).

2. M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area Mohali (Area Office).

3. M/s Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore, (Corporate Office). . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Sumit Chaudhary, Adv.
For the Respondent no.1	: Sh. Rajat Sahotra, Adv.
For the Respondent(s) no.1 & 2	: Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjeevan Kumar s/o Shri Jagdish Chand, r/o Village Rihalpura, P.O. Tehsil & District Kangra, H.P. who was employed as Driver during November, 2012 by the Employer, (i) M/S GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office) employed through (ii) M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area Mohali, (Area Office) and (iii) M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murgeshpalya, Bangalore, (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that the respondents his working, being employers, constituted under the Companies Act, are working on a project in State of Himachal Pradesh under National Rural Health Mission (NRHM). They are providing services to the people of Himachal Pradesh by employing/appointing various skilled workers, such as pharmacist, drivers and other supporting staff on contract basis, as per Memorandum of Understanding, as entered into between the management of respondents and State of Himachal Pradesh under health department and aforesaid scheme by operating vehicle popularly known as “108 ambulance” to facilitate and to shift the patients to hospitals in emergent cases. The petitioner was engaged as pilot/driver by the respondents and worked as such in CHC Khundiyan from 10-2-2011 to 9-2-2012. He had undergone special training of seven days at Dharampur, District Mandi. Initially, the petitioner was appointed for one year *i.e.* from 10-2-2011 to 9-2-2012, but taking into account his sincerity towards the work, the employers had extended his period of service from time to time under the scheme, till he was illegally retrenched on 28-2-2012. The petitioner had worked continuously in 108 ambulance without any break and completed 240 days in each calendar year, by working for 18 to 20 hours daily. He by working overtime had rendered the services to the best of his ability day and night in emergent cases, as per guidelines and directions issued by the respondents. No complaint was ever made against him but, however, the respondents *vide* letter dated 28-9-2012 and without any prior notice and in contravention of the provisions of the labour laws and Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had illegally terminated his services on the ground that tenure/mission for which he had been engaged stood completed and his services were no more required by the employers. The respondents have not closed the establishment till date and still are rendering services to the State of Himachal Pradesh, as before. They have even engaged another person in place of the petitioner without adhering to the labour laws, Contract Labour (Regulation and Abolition) Act, 1970, rules and basic provisions of laws and thereby violated the basic right of the workers including that the petitioner. During his employment, the petitioner being a member through the registered union made several demands to the respondents from time to time to provide the workers with basic facilities under the labour laws at the work place *i.e.* minimum wages, applicable holidays, EPF, ESI facilities, pay slip etc., but without success. A meeting of State level body was held on

12-2-2013 at Bilaspur and joint demand charter had been sent to the respondents making the request to them to adhere to the labour laws and pay minimum wages, fix duty hours etc. It was not accepted by the respondents and vindictive attitude was adopted by them just to harass and crush the demands. The act of terminating the services of the petitioner is stated to be illegal, arbitrary, malafide, null and void, which required to be set aside and quashed. The petitioner is ready and willing to work with the respondents.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“that the claim petition be allowed and the respondents be directed to re-engage and regularize his services as pilot at the place where from he was illegally terminated alongwith all wages and consequential benefits. A direction to pay minimum wages and other basic facilities in the establishment *i.e.* fixed working hours, applicable holidays, issue pay slip, EPF and ESI facility and other amenities be also provided”

3. On notice, the respondents appeared. Respondent No. 1 and respondents No. 2 & 3 filed separate replies.

4. The petition was contended by respondent No. 1, taking preliminary objections regarding lack of maintainability, cause of action, locus standi, estoppel, suppression of material facts, that the petitioner had not come to the Court with clean hands and the petition being bad for mis-joinder of party. The contents of the petition were denied on merits. It was asserted that if the petitioner had been appointed as a driver, he was under the employment of respondents No. 2 & 3. Respondent No.1 was neither having any authority nor concern with the employment and termination of the petitioner. As per para 11 of the agreement entered into between respondent No. 1 and respondents No. 2&3, respondent No. 1 was not responsible either for the employment of the workers or for any claim, charges, demands made or raised by them during their employment. As per para No. 2 of the agreement, Adecco was to deploy and migrate the manpower resources for respondent No. 1. Paras 4 and 5 of the agreement restricted the liability of respondent No. 1. The letter of appointment, transfer and termination, all have been issued by Adecco. Respondent No. 1 was not having the power to appoint or terminate the services of workers employed by respondents No. 2 & 3. It was having no control over the employment of the petitioner. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. Respondents No. 2 & 3 took preliminary objections regarding lack of maintainability, estoppel, locus standi, cause of action, that the petitioner had not come to the Court with clean hands and that respondents No. 2 and 3 were entitled to special cost under Section 35A of Code of Civil Procedure as the petition was frivolous and vexatious. On merits, the contents of the petition were denied. However it was admitted that the petitioner was employed as driver by respondents No. 2 and 3. It was asserted that he had been engaged for doing the work of respondent No. 1, which had signed a Memorandum of Understanding with the State of Himachal Pradesh. Now the agreement between respondents No. 2 & 3 and respondent No. 1 stands terminated. It was specifically denied that the services of the petitioner had been terminated illegally. It has been claimed that he had been hired on fixed term contract basis as per the need base requirement. Respondents No. 2 & 3 had duly issued termination/work completion letter to the petitioner in tune with the terms and conditions of the fixed term appointment letter issued to him. It was admitted that the petitioner had initially been engaged for a period of one year from 10-2-2011 to 9-2-2012 and that his services were extended by respondents No. 2 & 3 from time to time under the scheme. However, it was specifically denied that his services had been illegally retrenched on 28-9-2012. The fixed period of employment

continued and ended with the project/work, for which the petitioner had been employed. Respondents No. 2 & 3 had already paid to him the salary for the period for which he had rendered the services. It is denied that the petitioner had worked for 18 to 20 hours daily. As per practice, being medical emergency services the employee is to work in a general shift of 12 hours with a two hours recess. One day off is allowed to a worker, on his attending extra duty hours. The services of the petitioner had been terminated by giving notice/letter dated 28-9-2012. The contract of respondents No. 2 & 3 with respondent No. 1 stands terminated but, however, the latter is still providing services of 108 ambulance in the State of Himachal Pradesh. The question of employing another person by respondents No. 2 & 3 does not arise at all. It is specifically denied that the respondents had not accepted the demand charter and had refused to obey the labour laws and further had adopted vindictive attitude to harass and crush the demands of the workers. Respondents No. 2 & 3 are not in position to re-engage the petitioner in its establishment, as now there is no contract in between respondents No. 2 & 3 and respondent No. 1. Respondents No. 2 & 3 also prayed that petition be dismissed.

6. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondents No. 2 and 3. No rejoinder to the reply preferred by respondent No. 1 has been filed by the petitioner.

7. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04-7-2015:

- (1) Whether termination of services of the claimant/petitioner by the respondent during year November, 2012 is/was illegal and unjustified as alleged? . . . *OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
- (3) Whether the claim petition is not maintainable in the present form? . . . *OPR.*
- (4) Whether the petitioner has not approached the Court with clean hands as alleged? . . . *OPR.*
- (5) Whether the petitioner has no locus standi to file the case as alleged? . . . *OPR.*
- (6) Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*
- (7) Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . . . *OPR.*

Relief.

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanjeevan Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter of employment dated 10-2-2001 as Ex. PW1/B, copy of OPD Slip No. 39952 dated 27-9-2012 as Ex. PW1/C and copy of order dated 14-3-2014 as Mark-A. Respondent No. 1 examined one Shri Ishan Rana as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of authority letter dated 19-5-2016 as Ex. RW1/B and copy of Agreement dated 10-8-2010 as Mark-A. Respondents No. 2 & 3 examined one Shri Raj Wadhwa as RW2, who tendered his statement by way of affidavit Ex. RW2/A and placed on the file copy of appointment

letter dated 10-2-2011 as Ex. RW2/B and e-mails dated 29-7-2013 as Mark-A and B and copy of termination letter dated 28-9-2012 as Mark-C. By way of additional evidence, respondent No. 1 examined one Shri Daya Ram, Associate HR, GVK EMRI, Dharampur, District Solan as RW3, who tendered in evidence certificate of registration under Contract Labour Act as Ex. R-1.

9. Written arguments preferred by learned Counsel for the parties perused. Oral arguments for the parties also heard and the records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Decided accordingly.
Issue No. 2	:	Entitled to lump sum compensation of ₹50,000/- (Fifty thousand)only.
Issue No. 3	:	Not pressed
Issue No. 4	:	Not pressed
Issue No. 5	:	No
Issue No. 6	:	No
Issue No. 7	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

11. As per the petitioner, he had been engaged as a driver by the respondents and had worked continuously *w.e.f.* 10-2-2011 till 28-9-2012, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

12. Per contra, respondent No. 1 contended that as the petitioner was not its employee, so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondents No. 2&3 and he had been deployed with respondent No.1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No. 1, so it was not liable to reinstate the petitioner in service.

13. It was claimed by respondents No. 2&3 that they were engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent No. 1 and respondent No. 3 to provide workers, so the petitioner alongwith 555 other workers had been engaged. It was also their stand that the services of the petitioner had been hired on a fixed term of contract and these respondents had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him.

14. In support of his case, Shri Sanjeevan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

15. In the cross-examination, he admitted that appointment letter had been issued to him by respondents No. 2&3. He was also categorical that he was being paid the salary by Adecco Company. It was also clearly admitted by him that now the contract between respondent

No.1 and respondents No. 2&3 has come to an end. They have been raising their claims, expenses and moving applications to respondents No. 2&3 only. It was also clearly admitted by him that after 9-2-2012, there is no certificate of extension of his employment annexed with the file.

16. Ex. PW1/B is the copy of appointment letter dated 10-2-2011 of the petitioner by respondent No. 2.

17. Ex. PW1/C is the copy of OPD Slip dated 27-9-2012 relating to the petitioner of Community Health Centre, Jawalamukhi.

18. Mark-A is the copy of order dated 14-3-2014 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1583 of 2014.

19. Conversely, respondent No. 1 examined Shri Ishan Rana, EME Operations, GVK EMRI, Dharampur, District Solan, H.P. as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.1.

20. In the cross-examination, he admitted that as per the contract in between respondent No.1 and respondents No. 2&3, manpower was being supplied by the latter to the former. He also admitted that the petitioner had been working with respondent No. 1 as a driver.

21. Ex. RW1/B is the copy of authority letter dated 19-5-2016.

22. Mark-A is the copy of Agreement dated 10-8-2010 executed in between GVK Emergency Management And Research Institute and M/s. Adecco Flexione Workforce Solutions Private Limited.

23. Shri Raj Wadhwa, Senior Executive Compliances, M/s Adecco India Private Ltd. SCO no. 21-22, Sector 19-C, Chandigarh appeared as RW2 for respondents No. 2 & 3. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondents No. 2&3.

24. In the cross-examination, he clearly admitted that an agreement had been entered into in between respondent No. 1 and respondents No. 2&3 on 10-8-2010, copy of which is Mark-A. He also admitted that as per the agreement the petitioner had been engaged by them and who had been sent for work to GVK. He further admitted that an appointment letter had been issued by them to the petitioner on 10-2-2011. Volunteered that, it was issued as per the requirement of GVK EMRI. It was also clearly admitted by him that termination letter dated 28-9-2012 had been issued by them. Self stated that, his services as well as contract had come to an end with GVK. He categorically admitted that the salary and accounts of the drivers were being maintained by them.

25. Ex. RW2/B is the copy of appointment letter dated 10-2-2011 of the petitioner (similar to Ex. PW1/B).

26. Marks-A and B are the copies of the e-mail dated 29th July, 2013.

27. Mark-C is the copy of termination letter dated 28-9-2012 pertaining to the petitioner.

28. By way of additional evidence, respondent No.1 examined Shri Daya Ram, Associate HR, GVK EMRI, Dharampur, District Solan, H.P. as RW3, who tendered in evidence certified

copy of certificate of registration under Contract Labour Act dated 29-3-2012 as Ex. R-1. He was not at all cross-examined either by respondents No. 2 and 3 or the petitioner.

29. It is not disputed that respondent No. 1 had signed a memorandum of understanding with the Government of Himachal Pradesh, as per which respondent No. 1 had been permitted to take skilled manpower from a third agency. From the ocular and documentary evidence, as discussed above, it is apparent that pursuant to the said memorandum of understanding, respondent No.1 had entered into an agreement dated 10-8-2010 (Mark-A) with respondent No. 3, whereby the manpower had been supplied to respondent No. 1 by respondent No. 3. Be it recorded here that respondent No. 2 is the area office, while respondent No. 3 is the corporate office of M/s Adecco India Private Limited.

30. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent No. 1 or that of respondents No. 2 & 3. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents. Respondent No.1 denied this fact and claimed that he was an employee of respondents No. 2&3. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and respondent No.1. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent No.1. Rather, he tendered in evidence a copy of his appointment letter as Ex. PW1/B. Similar appointment letter of the petitioner was placed on record by respondents No. 2&3 as Ex. RW2/B. As per this document the petitioner had initially been appointed by respondent No. 2 as a driver on 10-2-2011. Then, as per the own pleaded case of respondents No. 2&3, the petitioner had been employed by them for doing the work for respondent No. 1. It was also their case that termination/work completion letter had also been issued by them to the petitioner. In his substantive evidence, the petitioner clearly admitted that he had been issued the appointment letter by respondents No. 2&3. He was also categorical that the salary was being paid to him by Adecco company only. From these admissions made by the petitioner, it is evident that he was appointed by respondents No. 2&3 and that he was being paid the salary by the said respondents only. Shri Ishan Rana (RW1) was specific in his evidence that respondent No. 1 was neither having any authority nor concern with the employment and termination of the services of the petitioner. According to him, as per the agreement entered into between respondent No. 1 and respondents No. 2&3, it was only respondents No. 2&3 who were to deploy and migrate the manpower for respondent No. 1. A close scrutiny of the copy of agreement (Mark-A), which is an admitted document on the part of the respondents, would reveal that the manpower was to be deployed by respondent No. 2 for respondent No. 1, for providing emergency services. Shri Raj Wadhwa (RW2) for respondents No. 2&3 was specific in his evidence that the services of casual/temporary employees was being taken for a fixed period of employment and that the same continued and ended with the project/work, for which they were employed. The petitioner had also been selected on the said basis for the post of driver and had been deputed with respondent No.1. He was issued an appointment letter. While under cross-examination, he was categorical that the salary and accounts of drivers were being maintained by them.

32. Then, as per the copy of letter of employment Ex. PW1B (also Ex. RW2/B) dated 10-2-2011, it had been issued by respondent No. 2 in favour of the petitioner and that the same

was accepted by the latter by appending his signature on it. This documentary evidence, coupled with the oral evidence, as discussed above, leaves no doubt in mind that the petitioner stood appointed and terminated by respondent No. 2 only.

33. Faced with the situation, it was then contended that as the petitioner was under the direct control and supervision of respondent No. 1, he ought to be deemed to be a direct employee of respondent No. 1. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as ***International Airport Authority of India Vs. International Air Cargo Workers Union and Anr., (2009) 13 SCC 374*** that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner who was appointed as a driver by respondent No. 2, was to work under the directions, supervision and control of respondent No. 1, but his salary and accounts, as per the admission made by Shri Raj Wadhwa (RW2) were being maintained by respondents No. 2&3. His services stood terminated by respondent No. 2 only, by issuance of letter dated 28-9-2012, copy of which is placed on record as Mark-C. Therefore, the petitioner being an employee of respondents No. 2&3, the ultimate supervision and control lay with them, as they had decided where he was to work and how long he would work and subject to what conditions. He being sent to work under respondent No.1 by respondents No. 2&3, would only constitute secondary control by respondent No. 1 and the primary control remained with respondents No. 2&3.

34. Our own Hon'ble High Court in case titled as ***Agya Ram Vs. State of H.P., 2016 (sup.) Him.L.R. 2821*** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent No. 1. No appointment letter issued by respondent No. 1 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed *vide* an appointment letter issued by respondent No. 2 and that the salary was being paid to him by respondents No. 2&3 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent No.1 while discharging the official duties. In ***Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186***, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent No. 1 only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent No. 1. Rather, it is apparent that he was an employee of respondents No. 2&3, being his contractors and who were having the primary control and supervision over him.

35. It was next contended for the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act.

Conversely, it was claimed for respondents No. 2 & 3 that the services of the petitioner had been engaged for a fixed period of employment *vide* letter of employment (Ex.PW1/B), therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. No doubt, as per the letter of employment, copy of which is placed on record as Ex. PW1/B (also Ex. RW2/B), the term of appointment of the petitioner was valid for a period of one year from 10-2-2011 to 9-2-2012, but the fact remains that his services stood terminated by respondent No. 2 only on 28-9-2012. Although, it was claimed by respondent No.2&3 that after 9.2.2012, the services of the petitioner had been extended by them from time to time under the scheme, but no such scheme or order extending the term of appointment of the petitioner has seen the light of the day. The onus lay on respondents No. 2&3 to establish on record that after 9-2-2012, time to time terms of appointment of the petitioner had been extended by way of contract(s). Strangely enough, no such order or contract has been placed and proved on record by respondents No. 2&3. True it is that initially the petitioner had been appointed as a driver for a fixed term of one year but, however, after the expiry of the said term of one year, he still continued in service. His services were not discontinued on 9-2-2012. Be it recorded at the risk of repetition, no order extending the term of appointment of the petitioner has been placed on record by respondents No. 2&3. Therefore, it is my humble opinion that no limitation was fixed regarding the period of employment of the petitioner after 9-2-2012. That being the position, it cannot be said that the termination of services of the petitioner did not fall within the scope of 'retrenchment' as envisaged under Section 2 (oo) of the Act.

36. There is no denial of the fact that *vide* agreement dated 10-8-2010 (Mark-A), respondents No. 2&3 had provided its services to engage the petitioner alongwith many other workers to respondent No. 1. Shri Raj Wadhwa (RW2) clearly admitted that an agreement (Mark-A) had been entered into in between respondent no.1 and respondents No. 2&3. He was also categorical that as per this agreement the petitioner had been engaged by them. It is specifically stated by the petitioner that he had worked continuously *w.e.f.* 10-2-2011 till 28-9-2012 and that he had completed more than 240 days in each calendar year. His such testimony has remained unchallenged in the cross-examination. No *iota* of evidence has been led on record by the respondents to show that the petitioner had not completed more than 240 days in each calendar year. Shri Raj Wadhwa (RW2) was categorical in his cross-examination that termination letter dated 28-9-2012 had been issued by him. Be it stated here that as per this letter (Mark-C) the services of the petitioner stood terminated by respondent No. 2. It is nowhere the case of respondents No. 2&3 that they had not engaged more than 100 workers for rendering services to respondent No. 1. Therefore, the provisions of Chapter VB of the Act are applicable to the present case. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (c) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (d) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

37. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

38. Hence, this issue is decided accordingly.

Issue No. 2 :

39. Since, the termination of the services of the petitioner by respondent No. 2 have been held to be illegal and unjustified, as the provisions of Section 25-N of the Act had not been complied with, the question which now arises before this Court is as to what service benefits the petitioner is entitled to. From the ocular evidence led on record by the parties, it is clear that the contract in between respondent no.1 and respondents No. 2&3 stands expired. Shri Sanjeevan Kumar (PW1) categorically admitted while under cross-examination that now the contract in between respondent No.1 and respondents No. 2&3 has come to an end. So has also been admitted by Shri Ishan Rana (RW1). Shri Raj Wadhwa (RW2) was also specific in his chief-examination that now the agreement in between respondent No. 1 and respondents No. 2&3 stands terminated. That being the position, it would not be appropriate for this Court to pass an order for reinstatement of the petitioner in the present case, even though his termination has been proved to be illegal and unjustified, as respondents No. 2&3 are no more providing any manpower and the services in the project, where the petitioner had earlier been engaged. It has been laid down by the Hon'ble Supreme Court in **Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327** that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. It was also observed that compensation instead of reinstatement would meet the ends of justice. Similar is the view taken by the Hon'ble Supreme Court in case titled **Senior Superintendent Telegraph (Traffic) Bhopal V/s Santosh Kumar Seal and others vs, 2010 LLR 677.** Taking into account the facts and circumstances of this case and in view of the aforesaid binding precedents of the Hon'ble Supreme Court, the ends of justice would be met, if a lump sum compensation is awarded to the petitioner. Consequently, the petitioner is entitled to receive appropriate compensation from respondents No. 2&3. Since the services of the petitioner had been terminated in contravention of the prescribed procedure of the Act, therefore, he is entitled to lump sum compensation quantified at Rs. 50,000/-. This issue is decided accordingly.

Issues No. 3 and 4 :

40. Not pressed.

Issues No.5 and 6 :

41. In view of my findings on issues No. 1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as the cause of action to file and maintain the present petition. Hence, both these issues are answered in the negative and are decided against the respondents.

Issue No. 7 :

42. No evidence of estoppel has been led by the respondents. Hence, this issue is answered in the negative and is decided against the respondents.

Relief :

43. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, respondents No. 2 and 3 are hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondents 2 & 3 to the petitioner within four months from the date of receipt of Award failing which they shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 55/2016
Date of Institution : 20-2-2016
Date of Decision : 04-04-2019

Shri Mohinder Singh s/o Shri Diwan Chand, r/o Village and Post Office Tritha, Tehsil Dalhousie, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I. & P.H. Division, Dalhousie, District Chamba, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Mohinder Singh s/o Shri Diwan Chand, r/o Village and Post Office Tritha, Tehsil Dalhousie, District Chamba, H.P. before the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *vide* demand notice dated 2-2-2013 regarding his alleged illegal termination of service during April,

1997 suffers from delay and laches? If not, Whether termination of services Shri Mohinder Singh s/o Shri Diwan Chand, r/o Village and Post Office Tritha, Tehsil Dalhousie, District Chamba, H.P. by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. during April, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of May, 1995 by the respondent. He worked as such upto the month of April, 1997. His services were terminated by the respondent in the month of April, 1997 orally, without any reason. The services of workmen as shown at Serial Nos. 385 to 544 in the Divisional Level seniority list, were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No one month's notice was served, nor any retrenchment compensation had been paid to the petitioner before terminating his services. His termination was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. Many a times requests had been made by the petitioner to the respondent to re-engage him on muster roll basis, but without success. Written representations on dated 18-5-1999, 28-1-2005 and 13-10-2011 had also been made, but of no use. On 24th December, 2011, the petitioner had met the respondent in the office, when he was told that the department was not in a position to re-engage him on muster roll basis. He then had raised a demand notice on 2-2-2013, when conciliation proceedings were carried out by the Conciliation-cum-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner, who had declined to send a reference to the Court *vide* order dated 3-12-2013. It was challenged by the petitioner before the Hon'ble High Court, when the same was quashed. Subsequently, the Labour Commissioner had made a reference to the Court. Intermittent breaks were given by the respondent to the petitioner so that he could not work for 240 days in a year. The intermittent breaks are required to be counted for calculating continuous service for one year. New/fresh hands had also been engaged by the respondent after the retrenchment of the petitioner, which is violative of the provisions of Section 25-H of the Act. S/Shri Baldev Ram, Ramesh Kumar, Hem Raj and S/Smt. Biasa Devi, Sodha Devi and Lata Devi, being juniors to the petitioner were retained in service and have also been regularized by the respondent. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions of Sections 25-F, 25-G, and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"the oral termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be reinstated with full back wages, seniority, including continuity of service and regularization after eight years of service, with other consequential benefits, to which he may be entitled to".

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petitioner had himself abandoned the work and that the petition was bad on account of delay and laches have been taken.

The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar *w.e.f.* May, 1995 for seasonal/casual works and

had worked intermittently from the year 1995 till the year 1997, as per the requirement and availability of work and funds. He had voluntarily abandoned the job, despite the fact that the muster roll No. 125 was issued to him by the respondent. He was never disengaged by the respondent. He had never approached the department from the year 1997 upto the year 2013. The provisions of Sections 25-F, 25-G and 25-H of the Act had never been violated by the respondent. The workers at serial Nos. 385 to 544 had never abandoned the work. No juniors have been retained, except for the judicial verdicts and on compassionate grounds. The petitioner had never completed 240 days in the preceding twelve months, so the provisions of Section 25-B of the Act have not been fulfilled. No notice was required to be served upon the petitioner. It was denied that fictional breaks had been given to the petitioner. Rather, he had left the job of his own sweet will. S/Shri Baldev, Ramesh, Inder, Hem Raj, and Smt. Biasa Devi were engaged as per the orders of the Court. The workers, namely, S/Smt. Sodha Devi and Lata Devi had been engaged on compassionate grounds. The present dispute had been raised by the petitioner at a much belated stage.

In these circumstances, the respondent has prayed that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11-8-2017:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 2-2-2013 *qua* his termination of service during April, 1997 by respondent suffers from the vice of delay and laches as alleged? . . . *OPP*.
- (2) Whether termination of the services of petitioner by the respondent during April, 1997 is/was improper and unjustified as alleged? . . . *OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Mohinder Singh appeared as PW1 and also examined Shri Ramesh Kumar (PW2) as his witness. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list as Ex. PW1/B, copy of demand notice dated 2-2-2013 as Ex. PW1/C, copy of rejection order dated 3-12-2013 as Ex. PW1/D, copy of judgment dated 26-10-2015 as Ex. PW1/E, copy of muster roll as Ex. PX, copy of order dated 25-4-2016 as Mark-A, copy of representations dated 18-3-1999, 28-5-2012 and 13-10-2011 as Mark-A, Mark-B and Mark-C respectively. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner as Ex. RW1/B, copy of muster roll as Ex. RW1/C, copy of letter dated 27-9-2007 as Ex. RW1/D, copy of letter dated 27-8-2007 as Ex. RW1/E, copy of Award dated 1-10-2005 as Ex. RW1/F, copy of letter dated 18-9-2000 as Ex. RW1/G, copy of letter dated 5-11-1999 as Ex. RW1/H and copy of order dated 19-4-2001 as Mark-A.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Mohinder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he stated that he was engaged as a daily waged beldar in I&PH Division Dalhousie in the month of May, 1995. He admitted that the appointment of a daily wager is on the basis of muster roll. He had worked with the respondent intermittently till the month of April, 1997. He admitted that the work was given to them on the basis of muster roll. Muster roll Ex. Px has been issued by the department. He denied that he had left the work of his own after April, 1997. He denied that he had never been removed by the department. He admitted that Smt. Sodha Devi and Smt. Lata Devi were appointed on compassionate grounds after the death of their husbands. He feigned ignorance that Shri Baldev, Shri Ramesh, Smt. Biasa Devi, Shri Inder and Shri Hem Raj were re-engaged as per the orders of the Court. He denied that he had never made representation to the department after 1997 for being kept at work. He admitted that he had given the demand notice in February, 2013. He denied that in between he had never made any representation. He admitted that he owns land, which he cultivates. He denied that neither any fictional breaks were given, nor he was ever removed by the department. He also denied that he had not worked for 240 days or more in any year. He denied that no junior had been retained by the department.

12. PW2 Shri Ramesh Kumar testified that he had worked as beldar in I&PH Division, Dalhousie. The petitioner had also worked with him on muster roll basis. On 7-4-1997 they both were removed from work. They have been removed by the J.E. on the pretext that there was no work. In the cross-examination, he admitted that Ex. PX bears his signature in red circle. He feigned ignorance that on 7-4-1997 also the petitioner had worked with the department. He denied that thereafter the petitioner had never returned to work.

13. Ex. PX is the copy of muster roll pertaining to Shri Rattan Chand and others.

14. Ex. PW1/B is the copy of seniority list of beldar (daily waged) working under IPH Division Dalhousie as on 31-2-2000.

15. Ex. PW1/C is the copy of demand notice dated 2-2-2013 relating to the petitioner.

16. Ex. PW1/D is the copy of order dated 3rd December, 2013 issued by the Labour Commissioner, Himachal Pradesh.

17. Ex. PW1/E is the copy of judgment dated 26-10-2015 passed in CWP No.4250/2015 by the Hon'ble High Court of Himachal Pradesh.

18. Ex. PW1/F is the copy of judgment dated 25-4-2016 passed in LPA No. 49 of 2016 by the Hon'ble High Court of Himachal Pradesh.

9. Mark-A to Mark-C are the copies of representations dated 18-3-1999, 28-5-2012 and 13-10-2011 respectively made by the petitioner to the respondent.

20. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had not abandoned the work. As per the record, neither any notice had been issued nor any explanation of the petitioner had been called for his absence from duty. He admitted that the name of the petitioner had been struck off in Ex. RW1/C. Volunteered that, on the closing due to the absence a line is drawn. Neither the petitioner was charge-sheeted nor any inquiry was conducted before striking off his name. He was also not given any opportunity of being personally heard. He was categorical that as per the record no one month's notice or retrenchment compensation had been given to the petitioner. He clearly admitted that from May, 1996 to May, 2000, new/fresh hands had been engaged on muster rolls, out of which some had been kept on compassionate grounds. As per the record no permission had been obtained from the appropriate Government before retrenching the petitioner. He clearly admitted that at the time of engaging new/fresh hands, no offer in writing for work had been given to the petitioner.

21. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

22. Ex. RW1/C is the copy of muster roll pertaining to Shri Rattan Chand and others.

23. Ex. RW1/D is the copy of judgment dated 27-9-2007 passed in CWP No. 1240 of 2005 by the Hon'ble High Court of Himachal Pradesh.

24. Ex. RW1/E is the copy of judgment dated 27-8-2007 passed in CWP No.1239 of 2005 by the Hon'ble High Court of Himachal Pradesh.

25. Ex. RW1/F is the copy of the Award dated 1-10-2005 passed in Reference No.46/2002 (RBT No. 287/04) by this Court.

26. Ex. RW1/G is the copy of letter dated 18-9-2000 regarding employment assistance to Smt. Lata Devi (Daily Wage) Beldar on compassionate grounds.

27. Ex. RW1/H is the copy of letter dated 5-11-1999 regarding employment assistance to Smt. Sodha Devi (Daily Wages) Water Works Clerk on compassionate grounds.

28. Mark-A is the copy of order dated 19-4-2001 passed in O.A. (D) 690/2000 by the Hon'ble Administrative Tribunal.

29. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1995 and had worked as such till April, 1997. The respondent admitted this fact, but took the stand that the petitioner had worked intermittently during this period. This fact is also evident from the copy of the mandays chart pertaining to the petitioner placed on record by the respondent as Ex. RW1/B. Its perusal discloses that the services of

the petitioner were engaged by the respondent in the month of May, 1995 for the first time as daily waged beldar and he had only worked as such upto April, 1997. Then, Shri Pritam Singh Dhanotia (RW1) also clearly stated in substantive evidence that the petitioner had been engaged as a daily waged beldar in the month of May, 1995 and that he had worked as such upto the year 1997, though he claimed that the petitioner had worked intermittently. Therefore, it stands established from the ocular and documentary evidence led on record by the parties that the petitioner had initially been engaged by the respondent as a daily waged beldar in the month of May, 1995 and that he had worked as such upto April, 1997.

30. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Pritam Singh Dhanotia (RW1) clearly admitted that no notice or explanation of the petitioner had been called for his remaining absent from duty. He also clearly admitted that before striking off his name, no charge-sheet or inquiry had been conducted against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

31. Although, it was claimed by the petitioner that fictional breaks were intentionally given to him by the respondent so that he could not complete 240 days in a calendar year, and which fact is refuted by the respondent, but as there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination.

32. It was next contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent from May, 1995 upto 7th of April, 1997.

33. Section 25-B of the Act defines "continuous service". In terms of sub section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in May, 1995 and his services were retrenched in April, 1997 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

34. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. Although, in his chief-examination, he claimed that he had

rendered continuous service to the respondent from the month May, 1995 uptil 7th of April, 1997 but, however, when cross-examined, he stated that he had worked with the respondent intermittently till April, 1997. From the mandays chart, copy of which is placed on the file as Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, *i.e.* April, 1997, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

35. Learned Counsel for the petitioner vehemently argued that the respondent while retrenching the services of petitioner had violated the provisions of Section 25-G of the Act. He has referred to para No. 3 of the claim petition in which the petitioner has specifically mentioned that the persons shown at serial Nos. 385 to 544 in Divisional Level seniority list are juniors to him and whose services have been retained continuously by the respondent. Placed on record by the petitioner is the copy of seniority list of beldar (daily waged) working under I&PH Division Dalhousie, as on 31-12-2000, as Ex. PW1/B. The daily waged beldars, as shown in it from serial No. 385 onwards till serial No. 692, were appointed after May, 1995, whereas the services of the petitioner were engaged in May, 1995. Admittedly, as per this document all these persons are shown to have worked with the respondent till 31-12-2000 and their services were engaged after the engagement of the services of the petitioner. This indicates that persons junior to the petitioner had been serving the respondent/department even after the retrenchment of the petitioner, which as per the reference took place in the month of April, 1997. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. Thus, retaining junior persons and retrenching the services of a senior person who happens to be the claimant/petitioner, the respondent had clearly violated the provisions of Section 25-G of the Act. It is, therefore, held that the respondent had violated the provisions of Section 25-G of the Act.

36. It is there in the statement of the respondent (RW1) that from May, 1996 uptil May, 2000 new/fresh hands were engaged and out of which some were engaged on compassionate grounds. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment as required under Section 25-H of the Act was afforded to the petitioner by the respondent. Shri Pritam Singh Dhanotia (RW1) while under cross-examination categorically admitted that when new/fresh hands were engaged, the petitioner had not been offered the work in writing.

37. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

38. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

39. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

41. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 499½ days as per mandays chart on record and that his services were disengaged in April, 1997, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about **sixteen years i.e.** demand notice was given on 2-2-2013. Although, it was claimed by the petitioner that in between he had made various representations to the respondent and in this regard has placed on record the copies of such representations as Mark-A to Mark-C, but they cannot be taken into consideration having not been duly proved and exhibited on record. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 42 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for re-instatement or for back wages, but only for a lump sum compensation.

42. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹50,000/- (Rupees fifty thousand only) would be an appropriate relief to which

the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No. 1 is answered in the negative and against the respondent.

Issue No. 4 :

43. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

44. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	58/2016
Date of Institution	:	20-2-2016
Date of Decision	:	04-04-2019

Shri Ramesh Kumar s/o Shri Dhanu Ram, r/o Village and Post Office Golli, Tehsil Dalhousie, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. T.R. Bhardwaj, AR
For the Respondent	:	Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Ramesh Kumar s/o Shri Dhanu Ram, r/o Village and Post Office Golli, Tehsil Dalhousie, District Chamba, H.P. before the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *vide* demand notice dated 10-09-2012 regarding his illegal termination of service during July, 1996 suffers from delay and laches? If not, whether termination of the services of Shri Ramesh Kumar s/o Shri Dhanu Ram, r/o Village and Post Office Golli, Tehsil Dalhousie, District Chamba, H.P. by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. during July, 1996 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of September, 1994 by the respondent. He worked as such upto the month of July, 1996. His services were terminated by the respondent in the month of August, 1996 orally, without any reason. The services of workmen as shown at serial Nos. 339 to 495 in the Divisional Level seniority list, were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No one month’s notice was served, nor any retrenchment compensation had been paid to the petitioner before terminating his services. His termination was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. Many a times requests had been made by the petitioner to the respondent to re-engage him on muster roll basis, but without success. Written representations on dated 18-5-1999, 28-1-2005 and 13-10-2011 had also been made, but of no use. On 24th December, 2011, the petitioner had met the respondent in the office, when he was told that the department was not in a position to re-engage him on muster roll basis. He then had raised a demand notice on 10-9-2012, when conciliation proceedings were carried out by the Conciliation-*cum*-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner, who had declined to send a reference to the Court *vide* order dated 31-10-2013. It was challenged by the petitioner before the Hon’ble High Court, when the same was quashed. Subsequently, the Labour Commissioner had made a reference to the Court. Intermittent breaks were given by the respondent to the petitioner so that he could not work for 240 days in a year. The intermittent breaks are required to be counted for calculating continuous service for one year. New/fresh hands had also been engaged by the respondent after the retrenchment of the petitioner, which is violative of the provisions of Section 25-H of the Act. S/Shri Baldev Ram, Ramesh Kumar, Inder, S/Smt. Biasa Devi, Sodha Devi and Lata Devi, being juniors to the petitioner were retained in service and have also been regularized by the respondent. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions Sections 25- F, 25-G, and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be reinstated with full back wages, seniority, including continuity of service and regularization after eight years of service, with other consequential benefits, to which he may be entitled to”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petitioner had himself abandoned the work and that the petition was bad on account of delay and laches have been taken.

The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar *w.e.f.* September, 1994 for seasonal/casual works and had worked intermittently from the year 1994 till the year 1996, as per the requirement and availability of work and funds. He had voluntarily abandoned the job, despite the fact that the muster roll No. 413 was issued to him by the respondent. He was never disengaged by the respondent. He had never approached the department from the year 1996 upto the year 2012. The provisions of Sections 25-F, 25-G and 25-H of the Act had never been violated by the respondent. The workers at serial Nos. 339 to 495 had never abandoned the work. No juniors have been retained, except for the judicial verdicts and on compassionate grounds. The petitioner had never completed 240 days in the preceding twelve months, so the provisions of Section 25-B of the Act have not been fulfilled. No notice was required to be served upon the petitioner. It was denied that fictional breaks had been given to the petitioner. Rather, he had left the job of his own sweet will. S/Shri Baldev, Ramesh, Inder, Hem Raj, and Smt. Biasa Devi were engaged as per the orders of the Court. The workers, namely, S/Smt. Sodha Devi and Lata Devi had been engaged on compassionate grounds. The present dispute had been raised by the petitioner at a much belated stage.

In these circumstances, the respondent has prayed that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11-8-2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 10.09.2012 qua his termination of service during July, 1996 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during July, 1996 is/was improper and unjustified as alleged? . . .*OPP.*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ramesh Kumar appeared as PW1 and also examined Shri Tilak Raj (PW2) as his witness. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list as Ex. PW1/B, copy of demand notice dated 10-9-2012 as Ex. PW1/C, copy of rejection order dated 31-10-2013 as Ex. PW1/D, copy of judgment dated 26-10-2015 as Ex. PW1/E, copy of order dated 25-4-2016 as Ex. PW1/F, copy of muster roll as Ex. PX, copy of order dated 25-4-2016 as Mark-A, copy of representations dated 18-3-1999, 28-5-2012 and 13-10-2011 as Mark-A, Mark-B and Mark-C

respectively. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner as Ex. RW1/B, copy of muster roll as Ex. RW1/C, copy of letter dated 27-9-2007 as Ex. RW1/D, copy of letter dated 27-8-2007 as Ex. RW1/E, copy of Award dated 1-10-2005 as Ex. RW1/F, copy of letter dated 18-9-2000 as Ex. RW1/G, copy of letter dated 5-11-1999 as Ex. RW1/H and copy of order dated 19-4-2001 as Mark-A.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ramesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he stated that he was engaged as a daily waged beldar in I&PH Division Dalhousie in the month of September, 1994. He admitted that the appointment of a daily wager is on the basis of muster roll. He had worked with the respondent till the month of July, 1996. He admitted that the work was given to them on the basis of muster roll. Muster roll Ex. Px has been issued by the department. He denied that he had left the work of his own after July, 1996. He denied that he had never been removed by the department. He admitted that Smt. Sodha Devi and Smt. Lata Devi were appointed on compassionate grounds after the death of their husbands. He feigned ignorance that Shri Baldev, Shri Ramesh, Smt. Biasa Devi, Shri Inder and Shri Hem Raj were re-engaged as per the orders of the Court. He denied that he had never made representation to the department after 1996 for being kept at work. He admitted that he had given the demand notice in September, 2012. He denied that in between he had never made any representation. He admitted that he owns land, which he cultivates. He denied that neither any fictional breaks were given, nor he was ever removed by the department. He also denied that he had not worked for 240 days or more in any year. He denied that no junior had been retained by the department.

12. PW2 Shri Tilak Raj testified that he had worked as beldar in I&PH Division, Dalhousie. The petitioner had also worked with him on muster roll basis. On 17-7-1996 the petitioner was removed from work. They have been removed by the J.E. on the pretext that there was no work. In the cross-examination, he admitted that Ex. PX bears his signature in red circle. He denied that after 17-7-1996, the petitioner had never returned to work. He also denied that as he had worked with the petitioner, so he has deposed in his (petitioner's) favour.

13. Ex. PX is the copy of muster roll pertaining to Shri Rattan Chand and others.
14. Ex. PW1/B is the copy of seniority list of beldar (daily waged) working under IPH Division Dalhousie as on 31-2-2000.
15. Ex. PW1/C is the copy of demand notice dated 2-2-2013 relating to the petitioner.
16. Ex. PW1/D is the copy of order dated 3rd December, 2013 issued by the Labour Commissioner, Himachal Pradesh.
17. Ex. PW1/E is the copy of judgment dated 26-10-2015 passed in CWP No. 4250/2015 by the Hon'ble High Court of Himachal Pradesh.
18. Ex. PW1/F is the copy of judgment dated 25-4-2016 passed in LPA No.49 of 2016 by the Hon'ble High Court of Himachal Pradesh.
19. Mark-A to Mark-C are the copies of representations dated 18-3-1999, 28-5-2012 and 13.10.2011 respectively made by the petitioner to the respondent.
20. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had not abandoned the work. As per the record, neither any notice had been issued nor any explanation of the petitioner had been called for his absence from duty. He admitted that the name of the petitioner had been struck off in Ex. RW1/C. Volunteered that, on the closing due to the absence a line is drawn. Neither the petitioner was charge-sheeted nor any inquiry was conducted before striking off his name. He was also not given any opportunity of being personally heard. He was categorical that as per the record no one month's notice or retrenchment compensation had been given to the petitioner. He clearly admitted that from May, 1996 upto the year 2000, new/fresh hands had been engaged on muster rolls, out of which some had been kept on compassionate grounds. As per the record no permission had been obtained from the appropriate Government before retrenching the petitioner. He clearly admitted that at the time of engaging new/fresh hands, no re-employment notice was given to the petitioner.
21. Ex. RW1/B is the copy of mandays chart relating to the petitioner.
22. Ex. RW1/C is the copy of muster roll pertaining to Shri Rattan Chand and others.
23. Ex. RW1/D is the copy of judgment dated 27-9-2007 passed in CWP No. 1240 of 2005 by the Hon'ble High Court of Himachal Pradesh.
24. Ex. RW1/E is the copy of judgment dated 27-8-2007 passed in CWP No.1239 of 2005 by the Hon'ble High Court of Himachal Pradesh.
25. Ex. RW1/F is the copy of the Award dated 1-10-2005 passed in Reference No.46/2002 (RBT No.287/04) by this Court.
26. Ex. RW1/G is the copy of letter dated 18-9-2000 regarding employment assistance to Smt. Lata Devi (Daily Wage) Beldar on compassionate grounds.
27. Ex. RW1/H is the copy of letter dated 5-11-1999 regarding employment assistance to Smt. Sodha Devi (Daily Wages) Water Works Clerk on compassionate grounds.

28. Mark-A is the copy of order dated 19-4-2001 passed in O.A. (D) 690/2000 by the Hon'ble Administrative Tribunal.

29. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till July, 1996. The respondent admitted this fact, but took the stand that the petitioner had worked intermittently during this period. This fact is also evident from the copy of the mandays chart pertaining to the petitioner placed on record by the respondent as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of September, 1994 for the first time as daily waged beldar and he had only worked as such upto July, 1996. Then, Shri Pritam Singh Dhanotia (RW1) also clearly stated in his substantive evidence that the petitioner had been engaged as a daily waged beldar in the month of September, 1994 and that he had worked as such upto the year 1996, though he claimed that the petitioner had worked intermittently. Therefore, it stands established from the ocular and documentary evidence led on record by the parties that the petitioner had initially been engaged by the respondent as a daily waged beldar in the month of September, 1994 and that he had worked as such upto July, 1996.

30. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In **Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Pritam Singh Dhanotia (RW1) clearly admitted that no notice or explanation of the petitioner had been called for his remaining absent from duty. He also clearly admitted that before striking off his name, no charge-sheet or inquiry had been conducted against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

31. Although, it was claimed by the petitioner that fictional breaks were intentionally given to him by the respondent so that he could not complete 240 days in a calendar year, and which fact is refuted by the respondent, but as there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination.

32. It was next contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent from September, 1994 upto July, 1996.

33. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in September, 1994 and his services were retrenched in July, 1996 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

34. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. Although, in his chief-examination, the petitioner claimed that he had rendered continuous service to the respondent from the month September, 1994 upto 18th of July, 1996 but, however, from the mandays chart, copy of which is placed on the file as Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, *i.e.* July, 1996, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

35. Learned Counsel for the petitioner vehemently argued that the respondent while retrenching the services of petitioner had violated the provisions of Section 25-G of the Act. He has referred to para No. 3 of the claim petition in which the petitioner has specifically mentioned that the persons shown at Serial Nos. 339 to 495 in Divisional Level seniority list are junior to him and whose services have been retained continuously by the respondent. Placed on record by the petitioner is the copy of seniority list of beldar (daily waged) working under I&PH Division Dalhousie, as on 31-12-2000, as Ex. PW1/B. The daily waged beldars, as shown in it from serial No. 339 onwards till Serial No. 692, were appointed after September, 1994, whereas the services of the petitioner were engaged in September, 1994. Admittedly, as per this document all these persons are shown to have worked with the respondent till 31-12-2000 and their services were engaged after the engagement of the services of the petitioner. This indicates that persons junior to the petitioner had been serving the respondent/department even after the retrenchment of the petitioner, which as per the reference took place in the month of July, 1996. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. Thus, retaining junior persons and retrenching the services of a senior person who happens to be the claimant/petitioner, the respondent had clearly violated the provisions of Section 25-G of the Act. It is, therefore, held that the respondent had violated the provisions of Section 25-G of the Act.

36. It is there in the statement of the respondent (RW1) that from May, 1996 upto the year 2000 new/fresh hands were engaged and out of which some were engaged on compassionate grounds. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment as required under Section 25-H of the Act was afforded to the petitioner by the respondent. Shri Pritam Singh Dhanotia (RW1) while under cross-examination categorically admitted that when new/fresh hands were engaged, the petitioner had not been offered the work in writing.

37. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

38. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

39. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

41. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 496 days as per mandays chart on record and that his services were disengaged in July, 1996, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after more than **sixteen years i.e.** demand notice was given on 10-9-2012. Although, it was claimed by the petitioner that in between he had made various representations to the respondent and in this regard has placed on record the copies of such representations as Mark-A to Mark-C, but they cannot be taken into consideration having not been duly proved and exhibited on record. At the risk of repetition, the

petitioner on the date of filing the claim petition was aged 40 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

42. In view the discussion and findings arrived at by me above, a lump-sum compensation of `50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No. 1 is answered in the negative and against the respondent.

Issue No. 4 :

43. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

44. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 346/2015
Date of Institution	: 05-8-2015
Date of Decision	: 04-04-2019

Shri Chain Singh s/o Shri Dharma, r/o Village Gailla, P.O. Sarol, Tehsil and District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D., Division, Chamba, District Chamba, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent(s) : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Chain Lal s/o Shri Dharma, r/o Village Gailla, P.O. Sarol, Tehsil and District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Chamba, District Chamba, H.P. *w.e.f.* November, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. After the receipt of the abovementioned reference, a corrigendum dated 20th January, 2017 was received from the appropriate government which reads:

“In partial modification of this Department’s Notification of even number dated 29-07-2015, the date of termination of workman Shri Chain Lal s/o Shri Dharma may be read as “**January, 2005**” instead of “**November, 2004**”, which was inadvertently recorded in the said notification”.

3. The case of the petitioner, as it emerges from the statement of claim is that he had already filed O.A. (D) No. 234/2003 before the Hon’ble Administrative Tribunal, which was disposed of with the directions to the respondent to not give breaks to the petitioner if the work and funds are available and also not to terminate his services, only except in accordance with law. It is asserted that the petitioner had rendered eleven years continuous service to the respondent/department, but the respondent had disengaged his services *vide* letter No. PWC-Court case/2004-05-10933-37 dated 29-11-2004, without giving him any opportunity of being heard. The respondent had also disengaged other persons, who had already filed O.A. (D) No. 581/2001, but they were re-engaged. Not only this, Shri Tilak had also filed O.A. (D) No.183/2000, who had completed 240 days in each calendar year. The services of the said daily waged labourers were regularized by the respondent/department, which is clearly a violation of law and policy by the respondent/department and it amounts to discrimination of the petitioner. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh. Umesh Handa, Chaman Lal, Vikarmo, Jarmo, Beli Ram, Tilak Raj, Tilak Raj s/o Shri Teju Ram, Ramesh, Bishan Dass, Sanjay Kumar and Ganesh. The respondent had given fictional breaks to the petitioner when he remained in service. The respondent had allowed the juniors to complete 240 days in each working year and their daily paid services have been regularized. However, the services of the petitioner had been terminated without assigning any reason. It is asserted that the respondent had not followed the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), while retaining juniors to the petitioner.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“that the claim petition be allowed with the benefit of re-engagement of the petitioner with full back wages, seniority, past daily paid services rendered to the respondent/department and compensation”.

4. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petition was premature and that the petition was bad on account of delay and laches have been taken.

On merits, it is admitted that O.A. (D) No. 234/2003 was filed before the Hon'ble Administrative Tribunal, Himachal Pradesh and the same was decided on merits on 26-2-2004. It is also admitted that the respondent had issued notice dated 29-11-2004 to the petitioner. It was issued, as at that time funds and work were not available with the respondent. Alongwith the petitioner, other workmen had also been disengaged by issuance of requisite notices. For the purpose of regularization, a workman, as per the prevailing policy of the Government has to complete a continuous service of 240 days for eight to ten years. The petitioner had been engaged by the respondent in the month of June, 1994 as a daily waged beldar and he had not completed the requisite 240 days of continuous service in any of the years. It is asserted that subsequent to November, 2004, the petitioner had only worked with the respondent in the months of December, 2004 and January, 2005, *vide* muster rolls no.647 and 723. The claim of the petitioner is premature and has become infructuous. The petitioner has raised the present industrial dispute after a belated stage *i.e.* in the year 2008. The respondent had not violated the provisions of the Act. It is asserted that the services of the petitioner were terminated due to non-availability work and funds with the department and the respondent had followed the principle of 'last come first go'. The workmen as mentioned in the petition are senior to the petitioner.

In these circumstances, the respondent prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

6. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 08-11-2016:

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* November, 2004 is/was improper and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
- (5) Whether the claim petition is premature and has become in-fructuous as alleged? . . .*OPR.*

Relief.

7. On receipt of corrigendum dated 20th January, 2017 by this Court from the appropriate government, issue No.1 was recast/reframed on 20-11-2018, as follows:

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* January, 2005 is/was legal and justified as alleged? . . . *OPP.*

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chain Lal examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex. PW1/B, copy of reply to the demand notice as Ex. PW1/C, copy of letter dated 29-11-2004 as Ex. PW1/D, copy of judgment dated 19-9-2001 as Ex. PW1/E, copies of Awards passed in Ref. Nos.04/2010, 266/2010 & 270/2010 as Ex. PW1/F to Ex. PW1/H, copy of seniority list as Mark-A1 to A10. The respondents examined one Shri J.S. Thakur as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart as Ex. RW1/B, copies of muster rolls as Ex. RW1/C1 to C2, copies of mandays charts of Shri Umesh Kumar and others as Ex. RW1/D1 to Ex. RW1/D11 and copy of judgment dated 26-2-2004 as Ex. RW1/E.

9. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: Not pressed
Relief	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

11. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

12. Shri Chain Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

13. In the cross-examination, he stated the he is doing days' drudgery these days. He owns two biswas of land. He is also working under MNREGA. He admitted that in the year 2003, he had filed a case before the Hon'ble Administrative Tribunal. He further admitted that the department had given notice to him on 29-11-2004. He denied that *vide* the notice, he was informed by the department that as and when the work and budget would be available, he would be kept. He clearly admitted that notices had also been issued to his co-workers. He was categorical that he had never completed 240 days or more in any year. He also admitted that he had also worked in January, 2005. He specifically denied that no breaks had been given to him by the department. He also denied that no juniors to him had been kept at work by the department.

He admitted that he was also working as an agriculturist. It was also admitted by him that from January, 2005 till the year 2008, he had never made any report for being kept at work.

14. Ex. PW1/B is the copy of demand notice dated 9-6-2008 pertaining to the petitioner.
15. Ex. PW1/C is the copy of reply to the demand notice filed by the respondent before the Labour Officer-cum-Reconciliation Officer, Chamba, H.P.
16. Ex. PW1/D is the copy of letter dated 29-11-2004 regarding filing of O.A. No. (D) 587/01 by Shri Bali Ram.
17. Ex. PW1/E is the copy of the order dated 19-9-2001 passed in OA (D) 183/2k by the Hon'ble Administrative Tribunal.
18. Ex. PW1/F to Ex. PW1/H are copies of Awards passed in reference Nos. 4/2010, 266/2010 and 270/2010.
19. Mark-A1 to Mark-10 are the copies of the seniority lists of daily waged beldars, namely, Shri Umesh Kumar and others.
20. Conversely, Shri J.S. Thakur, Executive Engineer, HPPWD, Division Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.
21. In the cross-examination, he admitted that the petitioner had worked with the department from June, 1994 till January, 2005. Volunteered that, he had been working intermittently. He also admitted that as per the record a case had been filed by the petitioner before the Hon'ble Administrative Tribunal. He further admitted that alongwith the petitioner Shri Umesh Handa had also filed an O.A. He clearly admitted that Shri Tilak Raj s/o Shri Teju and Shri Ramesh s/o Shri Vyas Dev are working in this Division. He specifically denied that the abovenamed workers had not completed 240 days. No junior person/worker had been retained in their Division. It was also denied by him that fictional breaks had been given by the department to the petitioner. He feigned ignorance about the number of workers kept at work as per the Court order. Self stated that, he could tell it after seeing the record.
22. Ex. RW1/B is the copy of mandays chart relating to the petitioner.
23. Exts. RW1/C1 and RW1/C2 are the copies of muster rolls pertaining to Shri Surender Kumar and others.
24. Exts. RW1/D1 to RW1/D11 are the copies of seniority list of Shri Umesh Kumar and others.
25. Ex. RW1/E is the copy of judgment dated 26th February, 2004 passed in OA (D) 236/2003.
26. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of June, 1994 and that he had worked as such upto January, 2005. The respondent admitted this fact, but took the stand that the petitioner had worked intermittently during this period. Place on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1994 for the first time as a daily waged beldar and he had worked as such upto January, 2005.

27. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent for about 11 years.

28. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in June, 1994 and his services were retrenched in January, 2005 and during the period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

29. Applying the principles laid down in the above case by the Hon’ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. Although, in his chief-examination, he claimed that he had rendered 11 years continuous service with the respondent but, however, when cross-examined, he had to admit that he had not completed 240 days or more in any of the years. At the risk of repetition, per the mandays chart copy of which is Ex. RW1/B, the petitioner had initially been engaged in June, 1994 as a daily wager and he had worked upto January, 2005. As per the reference the services of the petitioner were terminated in January, 2005. As per the mandays chart Ex. RW1/B, the petitioner had worked for 120 days in the year 1994, 194 days in the year 1995, 189 days in the year 1996, 196 days in the year 1997, 158.5 days in the year 1998, 165 days in the year 1999, 136 days in the year 2000, 171 days in the year 2001, 169 days in the year 2002, 188 days in the year 2003, 164.5 days in the year 2004 and 03 days in the year 2005. Thus, in his total service for a period of about twelve years in between June, 1994 to January, 2005, he had worked for 1854 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as January, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is not established on record that the petitioner had worked for 240 days preceding twelve calendar months from date of his termination. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

30. Learned Counsel for the petitioner vehemently argued that the respondent while retrenching the services of petitioner had violated the provisions of Section 25-G of the Act. He has referred to para No. 3 of the claim petition in which he has specifically mentioned the names of S/Shri Umesh Handa, Chaman Lal, Vikarmo, Jarmo, Beli Ram, Tilak Raj, Ramesh, Bisan Dass, Sanjay Kumar and Ganesh. Placed on record by the respondent are the copies of seniority lists of S/Shri Umesh Kumar, Chaman and Vikram, as Ex. RW1/D1 to Ex. RW1/D3. It is evident from these seniority lists that all the abovenamed persons are senior to the petitioner, as their months of initial joining are prior to that of the petitioner i.e. April & May respectively. Ex. RW1/D4 and Ex. RW1/D5 are the copies of the seniority lists pertaining to S/Shri Jarmo and Beli. There perusal reveals that they both were initially engaged by the respondent in the month of

June, 1994. Admittedly, the petitioner had also been engaged initially by the respondent in the month of June, 1994. The dates of joining of the aforesaid persons and that of the petitioner are not there on record. So, it cannot be said that S/Shri Jarmo and Beli were junior to the petitioner, as claimed by him. Anyhow, as per the copies of the seniority lists Ex. RW1/D6 to Ex. RW1/D11, it is apparent that S/Shri Tilak s/o Shri Rikhnu, Tilak s/o Shri Teju Ram, Ramesh Kumar, Bishan Dass, Sanjay Kumar and Ganesh Kumar all are junior to the petitioner, they having been engaged by the respondent subsequent to the month of June, 1994. Shri J.S. Thakur (RW1) while under cross-examination was categorical that Shri Tilak Raj s/o Shri Teju and Shri Ramesh s/o Shri Vyas Dev were still working with the respondent. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. Thus, retaining junior persons and retrenching the services of a senior person who happens to be claimant/petitioner, the respondent had clearly violated the provisions of Section 25-G of the Act. It is, therefore, held that the respondent had violated the provisions of Section 25-G of the Act.

31. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

32. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and is doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

33. These issues are decided accordingly.

Issue No. 3 :

34. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Issue No. 4:

35. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. Vs. Dilu Ram*** (CWP No.95/2000 decided on 26.8.2004) wherein it was *inter alia* held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

36. In ***Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

37. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-23/84(Lab)ID/2010/Mandi, dated 29th July, 2013. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

38. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 5 :

39. Not pressed.

Relief :

40. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination *i.e.* January, 2005 *except back wages*. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 56/2016
Date of Institution	: 20-2-2016
Date of Decision	: 05-04-2019

Shri Kewal Krishan s/o late Shri Chatter Singh, r/o Village Jasoor, P.O. Samote, Tehsil Bhatiyat, District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. B.C. Katoch, A.D.A

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kewal Krishan s/o late Shri Chatter Singh, r/o Village Jasoor, P.O. Samote, Tehsil Bhatiyat, District Chamba, H.P. before the Executive Engineer, I&P.H. Division, Dalhousie, District Chamba, H.P. *vide* demand notice dated 15-10-2010 regarding his alleged illegal termination of service during November, 2000 *vide* notice dated 6-10-2000 suffers from the delay and latches? If not, whether termination of the services of Shri Kewal Krishan s/o late Shri Chatter Singh, r/o Village Jasoor, P.O. Samote, Tehsil Bhatiyat, District Chamba, H.P. by the Executive Engineer, I&P.H. Division, Dalhousie, District Chamba, H.P. during November, 2000 *vide* notice dated 6-10-2000, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of April, 1983 by the respondent. He had worked as such continuously upto December, 1984. His services were disengaged in the end of December, 1984. In the year 1985-86 the Government had opened a new I&PH Sub-Division at Sihunta, being under the respondent and in the month of January, 1987, the petitioner was re-engaged on muster roll. He had worked as such continuously till July, 1987. He was again disengaged on 1-8-1987. Again he was re-engaged *w.e.f.* 1-5-1996 and had since then continuously worked till the date of his termination in the month of November, 2000. The services of the petitioner had orally been terminated on 8-9/11/2000, without any reason. He was simply told by the respondent that his services were not more required by the department, whereas sufficient work was available. The services of the workmen as shown at serial Nos. 3 to 330, 360, 467, 518, 643, 691 and 692 in the Divisional Level seniority list, were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). In the seniority list the initial date of engagement of the petitioner has wrongly been shown as May, 1996, whereas he had been initially engaged for the first time on daily waged basis in April, 1983. His name as such has wrongly been shown at serial No. 473 in the seniority list, instead of serial No. 3. No one month’s notice was served, nor any retrenchment compensation had been paid to the petitioner before terminating his services. His termination was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. Many a times, requests had been made by the petitioner to the respondent to re-engage him on muster roll basis, but without success. On 24th December, 2009, the petitioner had met the respondent, when he was told that the department was not in a position to re-engage him on muster roll basis. He then had raised a demand notice on 15.10.2010, when conciliation proceedings were carried out by the

Conciliation-cum-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner, who had declined to send a reference to the Court *vide* order dated 16-2-2013. It was challenged by the petitioner before the Hon'ble High Court, when the same was quashed. Subsequently, the Labour Commissioner had made a reference to the Court. No notice dated 6-10-2000 had ever been received by the petitioner from the respondent. In the notice, it was alleged that due to non-availability of work and funds the services of the petitioner were no more required *w.e.f.* 9-11-2000, whereas thereafter a number of works stood awarded to various contractors running into crores, which only shows that funds and work were available with the respondent. The services of the petitioner had been terminated with the malafide intention, which amounts to unfair labour practice. S/Shri Baldev Ram, Ramesh Kumar, Inder and Smt. Biasa Devi, being juniors to the petitioner were re-engaged on muster rolls, but no opportunity of re-employment was afforded to the petitioner. It is violative of the provisions of Section 25-H of the Act. Had the services of the petitioner not been terminated illegally, the petitioner would have completed eight years continuous service, with 240 days in each calendar year as on 31-12-2004 and would have become entitled for regularization *w.e.f.* 1-1-2005. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions Sections 25-F, 25-G, and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be reinstated with full back wages, seniority, including continuity of service and regularization after eight years of service, with other consequential benefits, to which he may be entitled to”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

The contents of the petition were denied on merits. It was asserted that the petitioner had worked as a daily waged beldar on muster roll basis *w.e.f.* April, 1987. He had worked for 167 days in the year 1987, 216 days in the year 1996, 303 days in the year 1997, 277 days in the year 1998, 276 days in the year 1999 and 237 days in the year 2000. It was claimed that due to shortage of funds and work in the Division, the respondent was facing huge financial constraints and as a large number of daily waged workers were engaged in the Division, it was impossible to adjust all of them. Due to the provision of less budget and availability of work, the services of the petitioner alongwith 363 other workmen were disengaged after complying with the provisions of Section 25-F of the Act and by adhering to principle of ‘last come first go’ *w.e.f.* November, 2000. The provisions of Chapter VB of the Act were not attracted against the respondent. No junior worker was allowed to work in the Division. It is denied that the petitioner had been engaged in the month of April, 1983 and that he had been disengaged firstly in December, 1984 and thereafter in July, 1987. It was asserted that the petitioner had left the work of his own and had to come work in the year 1996. The services of the petitioner had rightly been retrenched by adhering to the principle of ‘last come first go’ and also keeping in view the relevant provisions of the Act. Since the petitioner had been retrenched in accordance with law, there was no need to re-engage him by the respondent. It was denied that there was a requirement to serve three months notice to the petitioner prior his termination. No juniors were allowed to work in the same Division, as such there was no violation of the Act. As per the seniority list all the workers mentioned at serial Nos. 324 to 692 were disengaged, except the workers appointed on compassionate grounds and shown at serial Nos. 467, 518, 531, 691 and 692. The respondent had re-engaged S/Shri Brij Lal and Hem Raj as per the orders of the Court. Since the petitioner had

abandoned the work in the year 1987 and had thereafter been engaged in the year 1996 and who had worked intermittently upto the year, 2000, his name was rightly placed at serial No. 473 of the seniority list. On months' notice dated 6-10-2000 under Section 25-F of the Act had been served upon the petitioner and compensation amounting to Rs. 3,600/- had been paid to him. The respondent has not violated any of the provisions of the Act. It is asserted that the petitioner was gainfully employed as an agriculturist.

In these circumstances, the respondent has prayed that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11-8-2017:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 15-10-2010 *qua* his termination of service during November, 2000 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
- (2) Whether termination of the services of petitioner by the respondent during November, 2000 is/was improper and unjustified as alleged? . . .*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kewal Krishan appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list as Ex. PW1/B, copy of demand notice dated 15-10-2010 as Ex. PW1/C, copy of rejection order dated 16-2-2013 as Ex. PW1/D, copy of judgment of Hon'ble High Court dated 26-10-2015 as Ex. PW1/E, copy of order dated 25-4-2016 as Ex. PW1/F, copy of mandays chart as Mark-A, copies of representations dated 18-5-2013, 28-1-2005 and 17-12-2008 as Mark-B, Mark-C and Mark-D respectively. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of cheque as Ex. RW1/C, copy of notice as Ex. RW1/D, copies of letters dated 5-11-1997, 6-5-1996, 5-11-1999 and 18-9-2000 as Ex. RW1/E to Ex. RW1/H, copy of registered letter as Ex. RW1/I, copies of the orders of the Hon'ble High Court of H.P. as Ex. RW1/J, Ex. RW1/K, copy of Award dated 1-10-2001 as Ex. RW1/L, copy of order dated 19-4-2001 as Mark- A1 to A3, copy of reply of demand notice as Mark-RA and copy of mandays chart Mark-RB.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	No
Issue No. 2	:	Decided accordingly
Issue No. 3	:	Decided accordingly
Issue No. 4	:	No
Issue No. 5	:	No
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹1,25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kewal Krishan (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was appointed as a daily waged beldar in the I&PH Department, Dalhousie Division in July, 1987. Volunteered that, he had been engaged in the year 1983. He denied that he had never been kept at work in the year 1983. He also denied that from the year 1988 uptil the year 1995 he had never worked. He feigned ignorance that in the months of October/November, 2000, the availability of budget and work in Dalhousie Division was reduced. He admitted that due to these reasons, like him the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that notice was given to him and other workers by the respondent. He denied that alongwith the notice compensation had also been given to him. Volunteered that, he had not received the compensation amount. He admitted that S/Smt. Sodha Devi, Lata Devi, Suno Devi, Sunita Devi and Madhu Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Baldev Ram, Ramesh Kumar, Inder Singh and Smt. Biasa Devi have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to re-employment and compensation.

11. Ex. PW1/B is the copy of seniority list of Beldar (daily waged) working under IPH Division Dalhousie.

12. Ex. PW1/C is copy of Demand notice pertaining to the petitioner.

13. Ex. PW1/D is the copy of order dated 16-2-2013 issued by Labour Commissioner, Himachal Pradesh.

14. Ex. PW1/E is the copy of judgment dated 26-10-2015 passed in CWP No.4250/2015 by the Hon'ble High Court of Himachal Pradesh.

15. Ex. PW1/F is the copy of judgment dated 25-4-2016 passed in LPA No.49 of 2016 by the Hon'ble High Court of Himachal Pradesh.

16. Mark-A is the copy of mandays chart relating to the petitioner.

17. Mark-B to Mark-D are the copies of representations dated 18-5-2003, 28-1-2005 and 17-12-2008 respectively made by the petitioner to the respondent.

18. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was retrenched, more than 600 workers were working with the department. He also admitted that as per the seniority list (Ex. PW1/B), S/Shri Tilak Raj, Brij Lal, Brij Lal s/o Shri Chamaru and S/Smt. Suno Devi, Sunita Devi, Madhu Devi, Sodha Devi and Lata Devi are juniors to the petitioner. Volunteered that, the services of S/Tilak Raj, Brij Lal, Hem Raj and Smt. Madhu have been re-engaged as per the orders of the Court and S/Smt. Suno Devi, Sunita Devi, Sodha Devi and Lata Devi were kept on compassionate grounds. He was also categorical that all the aforementioned junior workers are continuously working with the department. As per the record no notice of re-employment was given to the petitioner. He denied that the date of initial engagement of the petitioner has wrongly been reflected in the seniority list. He also denied that the number of working days of the petitioner mentioned in the mandays chart (Ex. RW1/B) have wrongly been shown. He admitted that during conciliation the reply of the respondent is Ex. RA and the mandays chart Ex. RB.

19. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

20. Ex. RW1/C is the copy Cheque no.488466 dated 6-10-2009.

21. Ex. RW1/D is the copy of notice issued by the respondent to the petitioner.

22. Ex. RW1/E to Ex. RW1/H are the copies of letters relating to Smt. Sunita Devi, Smt. Suno Devi, Smt. Sodha Devi and Smt. Lata Devi regarding their daily waged appointment on compassionate grounds.

23. Ex. RW1/I is the copy of receipt.

24. Ex. RW1/J is the copy of judgment dated 27-9-2007 passed in CWP No.1240 of 2005 by the Hon'ble High Court of Himachal Pradesh.

25. Ex. RW1/K is the copy of judgment dated 27-8-2007 passed in CWP No.1239 of 2005 by the Hon'ble High Court of Himachal Pradesh.

26. Ex. RW1/L is the copy of the Award dated 1-10-2005 passed in Reference No.46/2002 (RBT No.287/04) by this Court.

27. Ex. RA is the copy of reply to the demand notice.

28. Ex. RB is the copy of mandays chart relating to the petitioner.

29. Mark-A1 to Mark-A3 are the copies of order dated 19-4-2001 passed in OA (D) 690/2000 and 697/2001 by the Hon'ble Administrative Tribunal.

30. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. RW1/B produced by the respondent is disputed by the petitioner. However, its perusal discloses that the services of the petitioner were initially engaged in the year 1987 by the respondent. Although, the petitioner claimed that he was initially engaged by the respondent as a daily waged beldar in April, 1983 but, however, he has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1983.

31. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 9-11-2000 (afternoon) after issuing the notice, copy of which is Ex. RW1/D. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged, being surplus, due to the non-availability of work and funds. As already mentioned, Ex. PW1/B is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31-12-2001. The name of the petitioner figures at serial No.473 of the list.

32. It is the admitted case of the parties that S/Smt. Sodha Devi, Lata Devi and Suno Devi were appointed on compassionate grounds. A note in this regard has also been given on Ex. PW1/B. Anyhow, as per this seniority list of beldar (daily waged) working under I&PH Division Dalhousie, Smt. Sodha Devi was appointed by the respondent in November, 1999, whereas the services of Smt. Lata Devi were engaged in May, 2000, while Smt. Suno Devi was appointed in May, 1996. The dates of deaths of their husbands, namely, S/Shri Ashok Kumar, Tarbeej Singh and Tejo Ram have not come on the file. Admittedly, Smt. Sodha Devi, Smt. Suno Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. Shri Pritam Singh Dhanotia (RW1) in his substantive evidence categorically admitted that these juniors alongwith others are still working continuously with the department. The months of engagement of Smt. Sodha Devi, Smt. Lata Devi and Smt. Suno Devi are November, 1999, May, 2000 and May, 1996 respectively. At the cost of reiteration, I will like to add that the year of initial appointment of the petitioner as per Ex. RW1/B is 1987. There is nothing on the record to show that the deceased husbands of S/Smt. Sodha Devi, Lata Devi and Suno Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

33. Not only this, Shri Pritam Singh Dhanotia (RW1) in his cross-examination admitted that S/Shri Tilak Raj, Brij Lal, Brij Lal s/o Shri Chamaru and Smt. Madhu Devi are also junior to the petitioner and they are also working continuously with the department. Though, the names of two of the aforesaid workmen, namely, Shri Tilak Raj and Shri Brij Lal s/o Shri Chamaru Ram figure at serial Nos. 330 and 360 of the seniority list Ex. PW1/B, whereas that of the petitioner figures at serial No. 473, but they both are juniors to the petitioner, as their months of initial appointment are shown to be July, 1994 and January, 1995 respectively. Smt. Madhu Devi is also junior to the petitioner, whose name figures at serial No. 531 of Ex. PW1/B and she is shown to have been appointed by the respondent in February, 1997.

34. There is no denial of the fact that Reference No. 55/2016 titled as Mohinder Singh *versus* The Executive Engineer, I & PH Division, Dalhousie, District Chamba, H.P. was decided by this Court on 04-4-2019. While deciding the said reference, it was held by this Court that from May, 1996 upto May, 2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

35. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

36. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

37. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

38. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram Vs. State of H.P. and ors.***, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

39. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer Vs. Kuberbhai Kanjibhai*** 2019 (160) FLR 651, by relying upon the cases of ***Bharat Sanchar Nigam Limited Vs. Bhurumal*** (2014) 7 SCC 177 and ***District Development Officer & another Vs. Satish Kantilal Amerelia*** 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar***, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full

and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about six years and actually worked for 1476 days as per mandays chart on record and that his services were disengaged on 9-11-2000, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about *ten years i.e.* demand notice was given on 15-10-2010. Although, it was claimed by the petitioner that in between he had made various representations to the respondent and in this regard has placed on record the copies of such representations as Mark-B to Mark-D, but they cannot be taken into consideration having not been duly proved and exhibited on record. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 52 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

40. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No. 1 is answered in the negative and against the respondent.

Issue No. 4 :

41. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

42. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 53/2016
Date of Institution : 20-2-2016
Date of Decision : 05-04-2019

Shri Karmo *alias* Karam Chand s/o late Shri Hari Chand, r/o Village Dangari, P.O. Taragarh, Tehsil Bhatiyat, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. Soham Kaushal, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Karmo *alias* Karam Chand s/o late Shri Hari Chand, r/o Village Dangari, P.O. Taragarh, Tehsil Bhatiyat, District Chamba, H.P. before the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *vide* demand notice dated 18-5-2010 regarding his alleged illegal termination of service during August, 2000 suffers from delay and laches? If not, whether termination of the services of Shri Karmo *alias* Karam Chand s/o late Shri Hari Chand, r/o Village Dangari, P.O. Taragarh, Tehsil Bhatiyat, District Chamba, H.P. by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. during August, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of August, 1997 by the respondent. He worked as such uptil the month of August, 2000. His services were terminated by the respondent in the month of August, 2000 orally, without any reason. The services of workmen as shown at serial Nos. 568 to 692 in the Divisional Level seniority list, were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No one month’s notice was served, nor any retrenchment compensation had been paid to the petitioner before terminating his services. His termination was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. Many a times requests had been made by the petitioner to the respondent to re-engage him on muster roll basis, but without success. On 24th December, 2009, the petitioner had met the respondent, when he was told that the department was not in a position to re-engage him on muster roll basis. He then had raised a demand notice on 18-5-2010, when conciliation proceedings were carried out by the Conciliation-*cum*-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner, who had declined to send a reference to the Court *vide* order dated 16-2-2013. It

was challenged by the petitioner before the Hon'ble High Court, when the same was quashed. Subsequently, the Labour Commissioner had made a reference to the Court. Intermittent breaks were given by the respondent to the petitioner so that he could not work for 240 days in a year. The intermittent breaks are required to be counted for calculating continuous service for one year. New/fresh hands had also been engaged by the respondent after the retrenchment of the petitioner, which is violative of the provisions of Section 25-H of the Act. S/Shri Baldev Ram, Ramesh Kumar, Inder and Smt. Biasa Devi, being juniors to the petitioner were retained in service continuously. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions Sections 25-F, 25-G, and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be reinstated with full back wages, seniority, including continuity of service and regularization after eight years of service, with other consequential benefits, to which he may be entitled to”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar *w.e.f.* August, 1997. He had worked for 83 days in the year 1997, 238 days in the year 1998, 221 days in the year 1999 and 200 days in the year 2000. It is asserted that due to shortage of funds and work in the Division, the respondent was facing huge financial constraints and as a large number of daily waged workers were engaged in the Division, it was impossible to adjust all of them. Due to the provision of less budget and availability of work, the services of the petitioner alongwith 363 other workmen were disengaged after complying with the provisions of Section 25 of the Act and by adhering to principle of ‘last come first go’ *w.e.f.* October, 2000. The provisions of Chapter VB of the Act were not attracted against the respondent. It was denied that there was a requirement to serve three months notice to the petitioner prior his termination. No juniors were allowed to work in the same Division, as such there was no violation of the Act. It is asserted that the petitioner had worked intermittently *w.e.f.* August, 1997 upto October, 2000. The petitioner had never completed 240 days in the preceding twelve months, so the provisions of Section 25-B of the Act have not been fulfilled. No notice was required to be served upon the petitioner. It was denied that fictional breaks had been given to the petitioner. S/Shri Baldev, Ramesh, Inder Singh and Smt. Viasa Devi were engaged as per the orders of the Court.

In these circumstances, the respondent has prayed that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 20-9-2017:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 18-5-2010 *qua* his termination of service during August, 2000 by respondent suffers from the vice of delay and laches as alleged? . . .OPP.

- (2) Whether termination of the services of petitioner by the respondent during August, 2000 is/was illegal and unjustified as alleged? . . .*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
- (5) Whether the present claim is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Karmo *alias* Karam Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice dated 18-5-2010 as Ex. PW1/B, copy of rejection order dated 16-2-2013 as Ex. PW1/C, copy of judgment of Hon'ble High Court dated 26-10-2015 as Ex. PW1/D and copy of mandays of Shri Karam Chand Ex. PW1/E. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart of the petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹1,00,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 and 5 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Karmo *alias* Karam Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he stated that he was engaged as a daily waged beldar in I&PH Division Dalhousie in the month of August, 1997. He admitted that the appointment of a daily wager is on the basis of muster roll. He had worked with the respondent till the month of August, 2000. He admitted that the work was given to them on the basis of muster roll. He denied that he had left the work of his own after August, 2000. He denied that he had never been removed by the department. He feigned ignorance that there were a number of daily wagers with

the department. He denied that less funds and work were available with the department. He feigned ignorance that it was not possible for the department to retain all the workers. He denied that for this reason he alongwith other workers, being surplus, were not kept at work by the department. He denied that the department had complied with the principle of 'last come first go'. He feigned ignorance that the department had only re-engaged those workers, as ordered by the Court and on compassionate grounds. Volunteered that, they all were junior to him. He feigned ignorance that Shri Baldev, Shri Ramesh, Smt. Biasa Devi, Shri Inder and Shri Hem Raj were re-engaged as per the orders of the Court. He denied that he had never made representation to the department after 2000 for being kept at work. He admitted that he had given the demand notice on 18-5-2010. He admitted that he owns land, which he cultivates. He denied that neither any fictional breaks were given, nor he was ever removed by the department. He also denied that he had not worked for 240 days or more in any year. He denied that no junior had been retained by the department.

12. Ex. PW1/B is the copy of demand notice dated 18-5-2010 pertaining to the petitioner.

13. Ex. PW1/C is the copy of order dated 16th February, 2013 issued by the Labour Commissioner.

14. Ex. PW1/D is the copy of order dated 26-10-2015 passed in CWP No.4250/2015 by the Hon'ble High Court of Himachal Pradesh.

15. Ex. PW1/E is the copy of mandays chart pertaining to the petitioner.

16. Ex. PX is the copy of seniority list of Beldar (daily waged) working under IPH Division Dalhousie.

17. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that before retrenching the petitioner, no approval had been obtained from the appropriate Government. Volunteered that, he had not been moved, but had abandoned the work. He admitted that when the petitioner had been retrenched, more than 600 workers were working in the department. He admitted that in the end of August, 2000, neither any notice as required under Section 25-F nor any retrenchment compensation had been given to the petitioner. As per the record the petitioner had never been charge-sheeted nor any inquiry had been conducted against him. He also admitted that as per the record no explanation of the petitioner had been called for his remaining absent from duty. He was categorical that as per the mandays chart Ex. PW1/F, from September, 1999 upto August, 2000 the petitioner had worked for 282 days. He also clearly admitted that seniority list Ex. PX had been issued by the department. He feigned ignorance that the labourers from serial Nos. 568 to 692 were engaged in the months of September, October and November, 2000. He admitted that Shri Brij Lal, S/Smt. Lata Devi and Sodha Devi are continuously working. Volunteered that, Shri Brij Lal had been re-engaged as per the orders of the Court, while S/Smt. Lata Devi and Sodha Devi were kept on compassionate grounds. He clearly admitted that when S/Shri Ramesh Kumar, Baldev Raj, Inder Singh and Smt. Biasa Devi had been re-engaged on muster roll, no opportunity had been given to the petitioner. Self stated that they all had been kept at work as per the orders of the Court. He specifically admitted that all the abovesaid junior workers are continuously in service.

18. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

19. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of August, 1997 and had worked as such till August, 2000. The respondent admitted this fact, but took the stand that the petitioner had worked intermittently during this period. The aforesaid fact is also evident from the copy of the mandays chart pertaining to the petitioner placed on record by the respondent as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of August, 1997 for the first time as daily waged beldar and he had only worked as such upto August, 2000. Then, Shri Pritam Singh Dhanotia (RW1) also clearly stated in his substantive evidence that the petitioner had been engaged as a daily waged beldar in the month of August, 1997 and that he had worked as such upto the year 2000, though he claimed that the petitioner had worked intermittently. Therefore, it stands established from the ocular and documentary evidence led on record by the parties that the petitioner had initially been engaged by the respondent as a daily waged beldar in the month of August, 1997 and that he had worked as such upto August, 2000.

20. Although, the plea of abandonment has not been taken by the respondent in his reply, but from the cross-examination of the petitioner, it is evident that it was suggested to him that he himself had left the work after August, 2000. Shri Pritam Singh Dhanotia (RW1) also self stated in his cross-examination that the petitioner had not been retrenched, but he had left the work of his own free will. So, I proceed to discuss the plea of abandonment. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Shri Pritam Singh Dhanotia (RW1) categorically admitted in his substantive evidence that for absence from duty, no explanation or any notice was served upon the petitioner. Thus, the plea of abandonment is not established.

21. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

22. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that from August, 1997 till August, 2000 he had continuously worked with the respondent. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner

did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employer/respondent to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. As per the mandays chart Ex. RW1/B, the petitioner had worked for 83 days in the year 1997, 237 days in the year 1998, 217 days in the year 1999 and for 200 days in the year 2000. Thus, in his total service for a period of more than four years in between August, 1997 to August, 2000, he had only worked for 737 days. Be it recorded here that the petitioner had worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as August, 2000. Shri Pritam Singh Dhanotia (RW1) clearly admitted in his cross-examination that as per the mandays chart (Ex.PW1/E and also Ex. RW1/B), the petitioner had worked for 282 days from September, 1999 till August, 2000. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had worked for more than 240 days preceding twelve calendar months from date of his termination. It is evident from the mandays chart that from August, 1997 upto August, 2000, the petitioner had worked for 254 days *i.e.* 18 days in the month of August, 20 days in the month of September, 19 days in the month of October, 16 days in the month of November and 27 days in the month of December for the year 1999 and 22 days in the month of January, 22 days in the month of February, 29 days in the month of March, 30 days in the month of April, 31 days in the month of May, 20 days in the month of June and 19 days in the month of July for the year 2000. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under Section 25-B of the Act. Thus, it was required of the respondent to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondent that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. Shri Pritam Singh Dhanotia (RW1) specifically admitted in his cross-examination that no notice under Section 25-F or any retrenchment compensation had been paid to the petitioner. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

24. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

“25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (e) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (f) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
-

- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

25. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondent, as provided under Section 25-N (b) of the Act. Shri Pritam Singh Dhanotia (RW1) had to admit that prior to the retrenchment of the petitioner no approval had been obtained from the State Government. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

26. Learned counsel for the petitioner vehemently argued that the respondent while retrenching the services of petitioner had violated the provisions of Section 25-G of the Act. He has referred to para No. 3 of the claim petition in which the petitioner has specifically mentioned that the persons shown at serial Nos. 568 to 692 in Divisional Level seniority list are junior to him and whose services have been retained continuously by the respondent. Placed on record is the copy of seniority list of beldar (daily waged) working under I&PH Division Dalhousie, as Ex. PX. The daily waged beldars, as shown in it from serial No. 568 onwards till serial No. 692, were appointed after August, 1997, whereas the services of the petitioner were engaged in August, 1997. Admittedly, as per this document all such persons are shown to have worked with the respondent upto the year 2000 and their services were engaged after the engagement of the services of the petitioner. It was clearly admitted by Shri Pritam Singh Dhanotia (RW1) that S/Shri Ramesh Kumar, Baldev Ram, Inder Singh and Smt. Biasa Devi, being junior workers, were continuously working with the department. Although, he self deposed that they had been re-engaged as per the orders of the Court, but that would not come to the rescue of the respondent in any way, for the reason that it would not defeat the claim of the petitioner of they being junior to him. This indicates that persons junior to the petitioner have been serving the respondent/department even after the retrenchment of the petitioner, which as per the reference took place in the month of August, 2000. The latter had failed to adhere to the principle of ‘last come first go’. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him. It was clearly admitted by Shri Pritam Singh Dhanotia (RW1) that when S/Shri Ramesh Kumr, Baldev Ram, Inder Singh and Smt. Biasa Devi were re-engaged, no opportunity was given to the petitioner.

27. There is no denial of the fact that Reference No. 55/2016 titled as Mohinder Singh versus The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. was decided by this Court on 04-4-2019. While deciding the said reference, it was held by this Court that from May, 1996 upto May, 2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is

not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

28. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

29. During his cross-examination, the petitioner has admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

30. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

31. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

32. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai** 2019 (160) FLR 651, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal** (2014) 7 SCC 177 and **District Development Officer & another Vs. Satish Kantilal Amerelia** 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum

monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four years and actually worked for 737 days as per mandays chart on record and that his services were disengaged in August, 2000, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about ***ten years*** i.e. demand notice was given on 18-5-2010. The petitioner on the date of his mounting the dock was aged 67 years and taking into consideration the factors mentioned above, as well as the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

33. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issues no. 1 and 5 are answered in the negative and against the respondent.

Issue No. 4 :

34. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

35. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 122/2017
Date of Institution : 21-06-2017
Date of Decision : 09-04-2019

Shri Rajinder Kumar s/o Shri Khub Ram, r/o Village Maihira, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None
For the Respondent : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rajinder Kumar s/o Sh. Khub Ram, r/o Village Maihira, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during February, 2001 to year, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer/management?”

2. The case was listed for service of petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that time to time termination of his services during February, 2001 to year, 2012 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 09th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 268/2014
Date of Institution : 27-08-2014
Date of Decision : 10-04-2019

Ms. Amrit Kaur d/o Sh. Mahender Pal Singh, V.P.O. Ner Chowk, Tehsil Sadar, District Mandi, H.P. . *Petitioner.*

Versus

The Managing Director, M/S Vinayak Eyes Hospital, Ner Chowk, Tehsil Sadar, Distt. Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent : Nemo.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Ms. Amrit Kaur d/o Sh. Mahender Pal Singh, V.P.O. Ner Chowk, Tehsil Sadar, Distt. Mandi, H.P. who was employed as Receptionist-cum-Pharmacist by the Managing Director, M/s Vinayak Eyes Hospital, Ner Chowk, Tehsil Sadar, Distt. Mandi, (H.P.) *w.e.f.* 28-02-2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above management?”

2. The case was listed for service of petitioner for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to file the statement of claim, adduce evidence or argue her case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that termination of her services *w.e.f.* 28-02-2009 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 886/2016
Date of Institution : 13-12-2016
Date of Decision : 16-04-2019

Shri Harish Kumar s/o Shri Brij Lal, r/o Village Jharera, P.O. Pehad, Tehsil Sarkaghat,
District Mandi, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Electrical Division, Mandi, District Mandi, H.P.
. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Harish Kumar s/o Shri Brij Lal, r/o Village Jharera, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, Electrical Division, H.P.P.W.D., Mandi, District Mandi, H.P. during March, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that the services of the petitioner were engaged as daily waged electrician in the month of September, 1999 on muster roll and he had continuously worked upto March, 2001. During this period, he was given fictional breaks by the Assistant Engineer, Electrical Sub-Division, Mandi, as per the directions of the respondent so that he could not complete 240 days qualifying service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is asserted that the services of the petitioner were orally retrenched by the Assistant Engineer, as per the direction of the respondent *w.e.f.* 1-4-2001, without following the provisions of the Act. Before terminating his services, no show cause notice, charge-sheet or inquiry had been conducted against the petitioner. No retrenchment compensation had been paid to the petitioner at the time of his unlawful termination. It was asserted that the respondent had served a retrenchment notice upon the petitioner through registered post under Section 25-F of the Act, whereby his services were terminated *w.e.f.* 31-1-2002. His services alongwith 36 other workmen had been terminated due to paucity of funds and work. After his termination, the petitioner had filed OA No. 358/2003 before the Hon’ble Administrative Tribunal which was dismissed on 20.7.2004, on the point of jurisdiction, giving him the liberty to approach the appropriate forum. The petitioner then had raised his industrial dispute before the Conciliation Officer, Mandi and the respondent had filed reply to the demand notice. About 20 daily waged workmen, who were terminated alongwith the petitioner, had been re-engaged by the respondent from time to time,

but no opportunity had been given to him. The respondent had even engaged several persons junior to the petitioner, namely, S/Shri Paras Ram, Murari Lal and Nikka Ram. The respondent had not followed the provisions of Section 25-H of the Act. It was asserted that the act of the respondent illegally terminating the services of the petitioner falls within the ambit of unfair labour practice and being violative of the mandatory provisions of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “(i) the illegal retrenchment order *w.e.f.* 1-4-2001 be set aside and the respondent be directed to reinstate him with full back wages, continuity in service, seniority and with all other consequential service benefits.
- (ii) the respondent be directed to regularize his services on the basis of the policy framed by the State Government and on the basis of his seniority falling in the cadre.
- (iii) the respondent be directed to pay Rs.15,000/- to him as litigation expenses and counsel fee.
- (iv) any other relief, as deem fit, be also granted in his favour”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it was asserted that the petitioner was engaged against prior sanctioned post of daily waged electrician. Initially he was engaged in Electrical Sub-Division, HPPWD Mandi (Section-Joginder Nagar) from September, 1999 upto March, 2001, as per the availability of work and funds. The petitioner was an intermittent worker. He had not worked for 240 days in each calendar year. As per notification dated 11-5-2000 of the Government of Himachal Pradesh and on account of non availability of funds and work, retrenchment of several casual labourers had been made by the department. The services of the petitioner alongwith others had been disengaged in March, 2001 due to scarcity of funds and work. No fictional breaks had been given to him. On 4-1-2002 a notice under Section 25-F of the Act had been served upon the petitioner. It was admitted that the petitioner had filed an OA before the Hon’ble Administrative Tribunal after his disengagement and that it was disposed of on 20-7-2004. No junior worker had ever been engaged by the respondent. The retrenched workmen had only been re-engaged as per the directions of the Court. The principle of ‘last come first go’ had been strictly adhered to. The petitioner had not approached for his re-engagement with the department and had raised a demand notice before the Conciliation Officer only in January, 2013, after a delay of about 8 ½ years. The petitioner is gainfully employed as an agriculturist.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13-11-2017:

- (1) Whether termination of services of petitioner by the respondent during March, 2001 is/was illegal and unjustified as alleged? . . .*OPP.*

- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
- (4) Whether the claim petition is bad on ground of delay and laches as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Harish Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of RTI letter dated 13-11-2013 as Ex. PW1/B, copy of seniority list from the year 1998 upto the year 2000 as Ex. PW1/C and copy of order of Hon'ble High Court in CWP No.6145/2012 as Ex. PW1/D. The respondent examined one Shri Dalip Singh Patial as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice dated 4-1-2002 as Ex. RW1/C and copy of orders/Awards Ex. RW1/D to Ex. RW1/F.

7. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Harish Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged in September, 1999 by the department. He admitted that he was appointed as electrical mistry by the department. He further admitted that he had worked intermittently till the month of March, 2001 with the respondent. He denied that the he had never worked continuously. He also admitted that he had worked with the department as per availability of work and funds. He admitted that he had not

worked for 240 days in any year. He denied that he had left the work of his own sweet will. He denied that the department had never given him breaks. He admitted that the department had issued notice to him on 4-1-2002. He admitted that he owns 2-3 bighas land, which he cultivates. He denied that no junior had been kept at work by the respondent. He admitted that S/Shri Manoj and Rakesh Kumar were engaged as per orders of the Court.

11. Ex. PW1/B is the copy of letter dated 13-11-2013 regarding information under RTI Act, 2005.

12. Ex. PW1/C is the copy of the seniority list pertaining to Shri Manoj Kumar and others.

13. Ex. PW1/D is the copy of judgment dated 20-12-2012 passed in CWP No.5189/2012 by the Hon'ble High Court of Himachal Pradesh.

14. Conversely, Shri Dalip Singh Patial, Executive Engineer, HPPWD, Electrical Division, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the record, the petitioner was engaged by the department from September, 1999 upto the month of March, 2001. Volunteered that, he had worked intermittently. He denied that the petitioner had worked for 240 days preceding twelve months. He also denied that the respondent had given fictional breaks to him. He further denied that the petitioner had been removed by the respondent. He feigned ignorance that in the month of March, 2001, 47 other workers including the petitioner had been removed by the respondent. Volunteered that, he had left the work of his own. He admitted that no correspondence had been made in the year 2001. He admitted that in Ex. PW1/C the name of the petitioner figures at serial No. 31. He was categorical that the workers shown at serial Nos. 31 and 34 were removed from service alongwith the petitioner. It is stated that aforesaid workers are presently working with the department.

15. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of retrenchment notice under Section 25-F given to the petitioner by the respondent.

17. Ex. RW1/D to Ex. RW1/F are the copies of orders/Awards passed by the Courts.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged electrician. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of September, 1999 by the respondent.

19. It is an admitted fact that the services of the petitioner were terminated by the respondent *w.e.f.* 31-1-2002 after issuing the notice, copy of which is Ex. RW1/C. Shri Harish Kumar (PW1) was categorical in his cross-examination that he had been served notice dated 4-1-2002 by the department. The version of the respondent is that the services of the petitioner and other similarly situated workmen were disengaged in March, 2001 due to non-availability of work and funds. As already mentioned Ex. PW1/C is the copy of the seniority list of the daily waged electricians, who remained on the rolls of the respondent upto the month of December, 2000. The name of the petitioner figures at serial No. 31 of the list.

20. As per the seniority list (Ex. PW1/C), Shri Sham Lal was appointed by the respondent in October, 1999, whereas the services of S/Shri Murari Lal and Nika Ram were engaged on 1-12-1999, while that of Shri Baldev Singh in May, 2000. Of course, a note has been given on Ex. PW1/C that S/Shri Murari Lal and Nika Ram were retained as per the orders of the Hon'ble H.P. Administrative Tribunal, but the fact remains that they both were junior to the petitioner, as their dates of initial appointments are 1-12-1999. Shri Dalip Singh Patial (RW1) in his substantive evidence clearly stated that both these workers are still working with the department. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. Although, it is claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents, but there is no documentary, cogent, convincing and reliable evidence on the file in this regard. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondents on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

23. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns 2-3 bighas land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

24. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

26. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about two years and actually worked for 379 days as per mandays chart on record and that his services were disengaged in the month of March, 2001, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given on 28-01-2013. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 52 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3 :

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy

District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 731/2016
Date of Institution	: 18-11-2016
Date of Decision	: 16-04-2019

Shri Biri Singh s/o late Shri Densu Ram, r/o Village Manoh, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Electrical Division, Mandi, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
For the Respondent	: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Biri Singh s/o late Shri Densu Ram, r/o Village Manoh, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. during year, 1995 by the Executive Engineer, H.P.P.W.D. Electrical Division, Mandi, District

Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 10 years *vide* demand notice dated 17-08-2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that the services of the petitioner were engaged as daily waged helper in the month of March, 1995 and he had continuously worked upto 30-4-1995 under Assistant Engineer, Electrical, HPPWD Sub Division Mandi. No appointment letter had been issued to him at the time of his appointment. His services were terminated in the month of April, 1995 without any notice under Section 25-F (a) of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). At the time of his unlawful termination, he was informed by the Assistant Engineer that work and funds were not available with the department. He was also told that as and when the funds and work would be available, he would be re-engaged. After his termination, the petitioner had made representations dated 7-11-1995, 22-12-1997 and 8-1-2001, but they were not responded to by the respondent. A demand notice was then raised by the petitioner on 17-8-2005 to re-engage him on the doctrine of 'last come first go'. When conciliation failed before the Labour Inspector-cum-Conciliation Officer, a failure report was sent to the Labour Commissioner, who after examining the report had declined to refer the matter to the Court. The petitioner immediately thereafter had filed Civil Writ Petition No.2095/2008, which was decided on 24-5-2016 by the Hon'ble High Court, whereby the order dated 8-8-2007 passed by the Labour Commissioner had been set aside, with a direction to make a reference for adjudication. A reference was then sent to the Court on 5-10-2016. It is asserted that the principle of 'last come first go' was not adhered to by the respondent and new/fresh hands had also been engaged from the year 1998 upto the year 2001, after the termination of the services of the petitioner. So, the provisions of Sections 25-G and 25-H of the Act had been violated by the respondent. The act of the respondent illegally terminating the services of the petitioner was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “(i) the illegal retrenchment order of the year 1995 be set aside and the respondent be directed to re-engage him with full back wages, continuity and seniority in service and other consequential service benefits,
- (ii) the respondent be directed to regularize his services on the basis of policy framed by the State Government and on the basis of his seniority falling in cadre,
- (iii) the respondent be directed to pay him Rs.15,000/- as litigation expenses and counsel fee,
- (iv) any other relief as deemed fit by the Court be also granted.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that no legal and fundamental right of the petitioner had been infringed, have been taken.

On merits, it was asserted that the petitioner had initially been engaged as an electrician on daily waged basis in Electrical Sub-Division HPPWD Mandi from March, 1995 to April, 1995.

He had never completed 240 days in each calendar year to fulfill the conditions as provided under Section 25-B of the Act. No fictional breaks had ever been given to the petitioner. He had never come back to work after April, 1995. As per notification dated 11-5-2000 of the Government of Himachal Pradesh and on account of non availability of funds and work, retrenchment of several casual labourers had been made by the department. The petitioner himself had abandoned the work. It was specifically denied that the principle of 'last come first go' had not been followed. It was also denied that new/fresh hands had been engaged by the respondent. The persons mentioned in para 6 of the statement of claim had been engaged as per the orders of the Hon'ble Administrative Tribunal. No persons by the name of Nek Ram and Chander had worked with the respondent. Shri Jeet Singh had been re-engaged on the basis of conciliation proceedings before the Labour Inspector-cum-Conciliation Officer, Joginder Nagar. The petitioner is gainfully employed as an agriculturist.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 16-10-2017:

1. Whether termination of services of the petitioner by the respondent during year 1995 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Biri Singh appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of demand notice dated 17-8-2005 as Ex. PW1/B, copy of reply to the demand notice dated 13-10-2005 as Ex. PW1/C, copy of judgment dated 24-5-2015 as Ex. PW1/D, copy of representations dated 7-11-1995, 22-12-1997 and 8-2-2001 as Mark-A to Mark-C and copy of seniority list as on 1-1-1998 as Ex. PX/A. The respondent examined one Shri Dalip Singh Patial as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. PW1/B, copies of muster rolls as Ex. RW1/C to Ex. RW1/E and copies of order/award as Ex. RW1/F1 to Ex. RW1/12 respectively.

7. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|-----------------------|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : No |

Relief

: Petition is partly allowed awarding lump sum compensation of ₹10,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Biri Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had worked only in the months of March and April, 1995 respectively. He denied that the department had not kept at work any junior to him. He denied that he had left the work of his own after April, 1995. He feigned ignorance that the department had issued muster roll in the month of May, 1995. He admitted that he had given demand notice in the year 2005. He denied that he had never made any representations from May, 1996 upto August, 2005. He also admitted that he is doing days drudgery. He admitted that he owns land, which they cultivate. He denied that no junior workers had been kept at work or regularized. He also denied that the department had not removed him from work. He further denied that the department had not kept him at work against any sanctioned post. He specifically denied that workers S/Shri Nek Ram and Chander were not kept at work. He feigned ignorance that Shri Ravi Kumar is presently not working with the department.

11. Ex. PW1/B is the copy of demand notice pertaining to the petitioner.

12. Ex. PW1/C is the copy of reply to the demand notice.

13. Ex. PW1/D is the copy of judgment dated 24-5-2016 passed in CWP No.2095/2008 by the Hon'ble High Court of Himachal Pradesh.

14. Mark-A to Mark-C are the copies of representations relating to the petitioner.

15. Ex. PX/A is the copy of seniority list of daily waged workers who were engaged on or after 1-1-1998.

16. Conversely, Shri Dalip Singh, Executive Engineer, HPPWD, Electrical Division, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that the petitioner was posted as an electrician from March, 1995 upto April, 1995 with the respondent. He admitted that no appointment letter was issued to the petitioner. He denied that the department had removed the petitioner from work. Volunteered that, he had left the job of his own sweet will. He admitted that no correspondence or departmental inquiry had been conducted against the petitioner for his leaving the job. He admitted that Ex. PX/A is a document of their department. He feigned ignorance that Shri Jeet Singh was posted with the department. He further feigned ignorance that the persons as shown in Ex. RW1/F1 to Ex. RW1/12 were disengaged in the month of March, 2001. Self stated that, they were kept at work as per the orders of the Court. He admitted that the aforementioned workers have been regularized.

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17. Ex. RW1/B is the copy of mandays chart relating to the petitioner.
18. Ex. RW1/C to Ex. RW1/E are the copies of muster rolls relating to the petitioner and others.
19. Ex. RW1/F1 to Ex. RW1/12 are the copies of orders/Awards passed by the Courts.
20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged electrician. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of March, 1995 by the respondent.
21. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Dalip Singh Patial (RW1) clearly admitted that as per the record there is no correspondence with the petitioner on his leaving the job, nor any departmental proceedings had been initiated against him. Thus, the plea of abandonment put forth by the respondent/employer is not established.
22. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. RW1/B, the petitioner had only worked for a total of 47 days from March, 1995 upto April, 1995. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.
23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 6 of the statement of claim. Shri Biri Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondent refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondent after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. So, there is nothing on record to establish that the principle of 'last come first go' had not been adhered to by the respondent. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case.
24. The petitioner has placed on the file the seniority list of daily waged workers, who were engaged on or after 1-1-1998. It depicts that after the year 1995, the year of disengagement of the petitioner, new/fresh hands were appointed by the respondent. There is nothing on the record to show that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner by the respondent. This clearly shows that the respondent has flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is wrong and illegal.

26. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. Besides this, it has also come in his evidence that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

27. The learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

28. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

29. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and

other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about two months and actually worked for 47 days as per mandays chart on record and that his services were disengaged in April, 1995, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about ***ten years*** i.e. demand notice was given on 17-8-2005. Although, it was claimed by the petitioner that in between he had made various representations to the respondent and in this regard has placed on record the copies of such representations as Mark-A to Mark-C, but they cannot be taken into consideration having not been duly proved and exhibited on record. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 44 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

30. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly.

Issue No. 3 :

31. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

32. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 171/2017

Date of Institution : 08-8-2017

Date of Decision : 16-04-2019

Smt. Satya Devi w/o Shri Keshav Ram, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat,
District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Satya Devi w/o Shri Keshav Ram, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. from time to time during year, 2000 to 2014 and finally terminated during March, 2014 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on daily waged basis in the year 1996. She worked under the supervision of Forest Range Officer, Kamlah upto the year 2014. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in March, 2014. Fictional breaks were given by the respondent upto the year 2013. It is also asserted that while terminating the services of the petitioner in the year 2014, the respondent had not followed the principle of ‘last come first go’ whereas the persons junior to her, namely, S/Sh. Love Kumar and Shyam Singh, S/Smt. Nirmla Devi and Sheela Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26-8-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was

claimed that the petitioner had been engaged in August, 2000 and had worked upto the year 2013 on bill voucher basis. At the time of termination of services of the petitioner, she had completed more than 240 days. Fictional breaks from time to time *w.e.f.* the year 1996 upto the year 2013 had been given by the respondent. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been owned that the services of the petitioner were engaged in the month of August, 2000 on seasonal forestry works as per availability of works and funds. It was denied that the petitioner was engaged in the year 1996. She had worked intermittently as per the availability of the work and funds on seasonal forest works on muster rolls basis during the months of August, 2000, March and August, 2001, March, 2003, July, 2005, July, 2006, March and June 2008, January, February and July, 2009 and that too for a very short period. She thereafter had hired work from the respondent/department on bill basis and had received the payments for the execution of various works. She had abandoned the works during the years 2002, 2004, 2007, 2010 and 2013. No fictional breaks were given to the petitioner and she had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. The work is provided to the seasonal/casual workers as per its availability and the funds. The services of the casual labourers are utilized by following the principle of 'last come first go'. The respondent had followed the principle of 'last come first go' strictly and no fresh hands have been engaged by him. It was further asserted that the services of Shri Love Kumar had been regularized as Forest Worker as per the order of the Labour Court and the services of Smt. Nirmla Devi were engaged on compassionate grounds in view of the order of the Hon'ble State Administrative Tribunal, whereas the services of Shri Shyam Singh was engaged as a contingent paid worker under died harness policy after death of his father. Smt. Sheela Devi was engaged as a part-time *w.e.f.* July, 1998 and thereafter her services had been converted into whole time on 26-11-2009 and she is still working as a daily wager with the respondent/department. Shri Onkar is junior to the petitioner and was engaged as a casual labourer *w.e.f.* 1.8.2008 for intermittent seasonal forestry works. Since the petitioner had absented from work of her own sweet will, the question of her termination during the year 2014 does not arise. It was asserted that the petitioner was engaged on bill voucher basis as per directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28-4-2009. It was further asserted that no fictional breaks had been given to the petitioner, however she was an intermittent worker and had been reporting for duty as per her own convenience and sweet will. It is also asserted that no junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist.

In these circumstances, the respondent prayed that the petition in had be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10-8-2018:

1. Whether time to time termination of the services of petitioner by the respondent during year, 2000 to year, 2014 is/was legal and justified as alleged? . . .*OPP.*

2. Whether final termination of services of the petitioner by the respondent during March, 2014 is/was legal and justified? . . .*OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the present claim petition is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the petition is bad on the ground of delay and laches as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Satya Devi appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31-12-2012 as Ex. PW1/B, copy of seniority list dated 30-11-2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of Award dated 13-1-2005 as Ex. RW1/C, copy of letter dated 19-12-2009 as Ex. RW1/D, copy of order dated 9-7-2003 as Ex. RW1/E, copy of letter dated 27-9-2008 as Ex. RW1/F.

7. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|---|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : Decided accordingly |
| Issue No. 4 | : Not pressed |
| Issue No. 5 | : No |
| Relief | : Petition is partly allowed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Satya Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of August, 2000. Volunteered that, she was engaged in the year 1996. She denied that she was not engaged in the year 1996. She denied that there is seasonal work in the department. Self stated that, work is available throughout the year. She denied that she had worked for 8 days in the year 2000, 19 days in the year 2001, 9 days in the year 2003, 14 days in the year 2005, 22 days in the year 2006, 26 days in the year 2008 and 53 days in the year 2009. She further denied that she had worked on bill basis in the months of January, 2011, August, 2012 and March, 2014. She denied that after the year 2014, she had left the work of her own. She admitted that her mandays produced by the department is correct. She also denied that she was never given fictional breaks. She denied that she had not completed 240 days. She further denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per orders of the Court. She also admitted that Smt. Nirmla Devi and Shri Shaym Singh were appointed on compassionate grounds. She feigned ignorance that Smt. Sheela Devi was kept on work as part-time in the month of July, 1998.

11. Ex. PW1/B is the Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31-12-2012.

12. Ex. PW1/C is the Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30-11-2016.

13. Ex. PW1/D is the copy seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He admitted that as per Ex. RW1/E Smt. Nirmla Devi, Forest Worker was appointed as a daily waged worker. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/F Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given seniority and continuity in service without back wages and his services were regularized in the month of September, 2007. He also admitted that Shri Shaym Singh is junior to the petitioner. Self stated that, Shri Shyam Singh was appointed as a daily wager on compassionate grounds and is working with the department. He denied that the petitioner had been given breaks from time to time upto the year 2014. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against her. He clearly admitted that the petitioner is posted since the year 2000. Volunteered that, she did seasonal work as a casual labourer. He was categorical that there was no agreement with the petitioner that she had been kept at work on bill basis. Volunteered that, as per the notification of the government, she was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No. 1 in Ex. PW1/C is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of Award dated 13-1-2005 passed in Reference No.278/2001 (RBT No.311/04) by this Tribunal.

17. Ex. RW1/D is the copy of letter dated 19-12-2009 regarding policy to regulate the services of Part-Time workers from Principal CCF, H.P.

18. Ex. RW1/E is the copy of order dated 9-7-2003 passed in O.A. (M) No. 20/2000 by the Hon'ble Administrative Tribunal, Shimla.

19. Ex. RW1/F is the copy of letter dated 27.9.2008 regarding appointment of sons, daughters/real relative of government servants died in harness-providing employment thereof.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of August, 2000 by the respondent. Although, the petitioner has claimed that her services were engaged as a daily wager by the respondent in the year 1996, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct.

21. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is August, 2000. Placed on record by the petitioner is the Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31-12-2012. It reflects the name of the petitioner at serial No. 67 and that her services were engaged as a daily wager on 7-7-2004. A revised Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, has also been placed on record by the petitioner as Ex. PW1/C. As per this document the initial date of engagement of the petitioner has been reflected as 1-1-2008. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of the budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. As per the seniority list of daily wagers of Joginder Nagar Forest Division, Ex. PW1/D, nine daily wagers shown therein have completed 240 days or more in a year. Persons working for 240 days or more in a year cannot be termed as seasonal workers. Even otherwise, it is nowhere the plea taken by the respondent nor there is any *iota* of evidence on record to show that the forest department has been declared as a seasonal factory, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the Government specifying the forest department as a seasonal industry.

22. The version of the petitioner is that she had worked with the respondent/department upto March, 2014. In the month of March, 2014, her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the year 2014 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 2000. The putting of this suggestion by the petitioner and its admission by the respondent leaves no doubt in mind that the petitioner admits that she is still serving in the department. Then, the Divisional level revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, Ex. PW1/C reflected the name of the petitioner at serial No. 41. As per this document the services of the petitioner were engaged as a daily wager on 1-8-2000. It is an admitted document on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of March, 2014, her name ought not to have been reflected in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were

disengaged by the respondent in March, 2014 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after March, 2014 has worked with the respondent, finds support from the seniority list, Ex. PW1/C, as it reflected the seniority of the daily waged labourers, as it stood on 30.11.2016. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of March, 2014, as alleged. As no retrenchment order was passed by the respondent in the month of March, 2014, it cannot be said that the termination/retrenchment order is illegal and unjustified.

23. So far as providing the fictional breaks to the petitioner by the respondent from time to time from the year 2000 upto the year 2014 is concerned, I would like to say that the said assertion of the petitioner appears to be true. As per the mandays chart, Ex. RW1/B, the work for the entire month was never being provided to the petitioner by the respondent. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had herself abandoned the work of her own free will and volition. If the petitioner used to remain absent from her duties, then why the respondent did not issue any show cause notice to her or initiate disciplinary proceedings against her? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per her sweet will and convenience is incorrect. A plea was also taken to the effect that since the year 2011, the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B for the month of January, 2011, July, 2012, August, 2012 and March, 2014, the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of March, 2014, is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

24. These issues are decided accordingly.

Issue No. 4 :

25. Not pressed.

Issue No. 5 :

26. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the

ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

27. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon’ble High Court in case titled ***Liaq Ram Vs. State of H.P. and others, 2012 (2) Him. L.R (FB) 580(majority view)*** will also be advantageous on this aspect of the matter.

28. While testifying in the Court as PW1, the petitioner has given her age as 49 years. It is well known that a middle aged woman like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she owns land, which she cultivates. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief :

30. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of her services in the month of March, 2014 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from the year 2000 upto the year 2014 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 54/2016

Date of Institution : 20-2-2016

Date of Decision : 16-04-2019

Shri Kishan Pal s/o Late Shri Sagar Singh, r/o Village and Post Office Jatroon, Tehsil Bhatiyat, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kishan Pal s/o late Shri Sagar Singh, r/o Village and Post Office Jatroon, Tehsil Bhatiyat, District Chamba, H.P. before the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *vide* demand notice dated 15-11-2011 regarding his alleged illegal termination of service during August, 2000 suffers from delay and laches? If not, Whether termination of the services of Shri Kishan Pal s/o late Shri Sagar Singh, r/o Village and Post Office Jatroon, Tehsil Bhatiyat, District Chamba, H.P. by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. during August, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of February, 1991 by the respondent. He worked as such upto the month of June, 1991. It is alleged that after termination of the services of the petitioner in the month of June, 1991, the respondent had again re-engaged the services of the petitioner in the month of July, 1994 as Complaint Attendant/Beldar. He worked as such upto September-October, 1999 with intermittent breaks, however, in the month of October, 1999, the services of the petitioner had been terminated by the respondent without any rhyme or reason. Thereafter, the petitioner along-with 11 workmen had filed O.A. No. 53/1999 before the Hon’ble Administrative Tribunal, wherein a directions were given to the respondent to not terminate the services of the applicants except in accordance with law and also not to given fictional breaks. After that the services of the petitioner were re-engaged by the respondent in the month of December, 1999, for a few days and the petitioner had worked upto August, 2000 and in the end of August, 2000, the services of the petitioner had been finally terminated orally without assigning any cogent reason. It was alleged that the respondent had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It was further alleged that when the services of the petitioner were finally terminated, the respondent had not neither given any retrenchment notice nor paid one month wages. The respondent had given fictional breaks to the petitioner so that he could not complete 240 days in each calendar year. No reason was assigned for the termination of his services. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent from the appropriate government to terminate his services Persons junior to him were retained in service by the

respondent, namely, S/Sh/Smt. Shiv Kumar, Ramna Devi, Daljit Kour, Narinder Singh etc. and their services have been regularized by the respondent. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 08 years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G, and 25-H of the Act.

“the oral order of termination/retranchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which he may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the month of February, 1990 and who remained engaged till the month of June, 1991. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. It is further asserted that petitioner was re-engaged as complaint attendant on daily wage basis in the month of July, 1994 and had worked with the respondent intermittently upto the month of August, 2000 and thereafter the petitioner had left the job of his own sweet will. However, the respondent denied that the petitioner was terminated in the month of October, 1999. It was admitted that O.A. No.53/1999 was filed by the petitioner and other workmen. No fictional breaks had ever been given to him by the respondent. He had not completed 240 days in any calendar year. It is asserted that the petitioner was not re-engaged as per order dated 22-11-1999 passed by the Hon'ble Administrative Tribunal. Infact the respondent had stated in the reply that the petitioner was still working with the respondent, which was apparent from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Courts or on compassionate grounds. No other workmen junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2000, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, i.e. after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 5-10-2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 15-11-2011 *qua* his termination of service during August, 2000 by the respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kishan Pal appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of order of the Hon'ble Administrative Tribunal as Ex. PW1/B, copy of demand notice dated 15-11-2011 as Ex. PW1/C, copy of order of Labour Commissioner dated 21-5-2015 as Ex. PW1/D, copy of judgment of Hon'ble High Court dated 26-10-2015 as Ex. PW1/E, copy of mandays chart of petitioner as Ex. PW1/F, copy of seniority list as Ex. PW1/G, copy of representation dated 20-5-2003 as Mark-X, copy of representation dated 28-1-2007 as Mark-Y and copy representation dated 13-10-2011 as Mark-Z. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart of petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Decided accordingly

Issue No. 3 : Decided accordingly

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of ₹1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 To 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kishan Pal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was appointed as a daily waged beldar in the I&PH Department, Dalhousie Division in February, 1991. He denied that he had worked as a daily waged beldar from February, 1991 upto June, 1991. He denied that he had left the work after June, 1991. He denied that he was kept at work in July, 1994 as a complaint attendant. He denied that he had worked intermittently with the respondent from the year 1994 upto August, 2000. Volunteered that, he had continuously worked. He feigned ignorance that in the months of October/November, 2000, the availability of budget and work in Dalhousie Division was reduced. He feigned ignorance that Shri Shiv Kumar, Smt. Ramna Devi, Smt. Daljit Kour and Shri Naginder Singh had been worked continuously with the department. He admitted that he had given demand notice in November, 2011. He denied that he owns land, which he cultivates. He stated that he is doing days' drudgery these days and is also working under MNREGA. Self stated that as and when the work is available. He denied that in all the years he had not worked for 240 days or more. He denied that neither the respondent had given him breaks nor removed him from work. He denied that he had not met the respondent on 20-8-2011. He also denied that he was never given assurance by the respondent to be kept at work. He denied that the respondent had kept at work the workers only as per the orders of the Court or on compassionate grounds.

11. Ex. PW1/B is the copy of order dated 22-11-1999 passed by the Hon'ble Administrative Tribunal.

12. Ex. PW1/C is copy of Demand notice pertaining to the petitioner.

13. Ex. PW1/D is the copy of order dated 21-5-2015 issued by Labour Commissioner, Himachal Pradesh.

14. Ex. PW1/E is the copy of judgment dated 26-10-2015 passed in CWP No.4250/2015 by the Hon'ble High Court of Himachal Pradesh.

15. Ex. PW1/F is the copy of mandays chart relating to the petitioner.

16. Ex. PW1/G is the copy of Seniority list of Beldar (daily waged) working under I&PH Division Dalhousie.

17. Mark-A to Mark-C are the copies of representations dated 20-5-2003, 28-1-2007 and 13-10-2011 respectively made by the petitioner to the respondent.

18. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I & PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was retrenched more than 600 workers were working with the department. He also admitted that as per the record in the end of August, 2000 neither any notice under Section 25-F nor any retrenchment compensation had been paid to the petitioner. As per their record the petitioner had never been charge-sheeted nor any inquiry was conducted against him. He was categorical that as per the record for absence from duty, the explanation of the petitioner had never been called, nor any notice served upon him. He specifically admitted that as per the mandays chart (Ex.PW1/F) the

petitioner had worked for 286 days from September, 1999 to August, 2000. It was also admitted that the seniority list (Ex. PW1/G) was issued by the department. He feigned ignorance that all the labourers mentioned at serial nos. 167 to 323 are working continuously after September, 2000. Self stated that he could tell after seeing the record. He also clearly admitted that the services of Smt. Biasa Devi, S/Shri Ramesh Kumar, Baldev Ram and Inder Singh were re-engaged on muster rolls, no opportunity was given to the petitioner. Self stated that they all had been re-engaged as per the orders of the Court. He specifically admitted that all the afore-named junior workers were continuously working with the department.

19. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart, copy of which is copy of Ex. PW1/F, produced by the petitioner is not in dispute. Its perusal disclosed that the services of the petitioner were initially engaged by the respondent in February, 1991.

21. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Pritam Singh Dhanotia (RW1) clearly admitted that no notice or explanation of the petitioner had been called for his remaining absent from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

22. Although, it was claimed by the petitioner that fictional breaks were intentionally given to him by the respondent so that he could not complete 240 days in a calendar year, and which fact is refuted by the respondent, but as there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination.

23. It was next contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act.

24. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in February, 1991 and was terminated in July, 1991. Thereafter, he was re-engaged in the month of July, 1994 as a complaint attendant/beldar and had continuously worked upto September-October, 1999. It is also his case that in the month of October, 1999, his services were terminated by the respondent and in view of the orders passed by the Hon'ble Administrative Tribunal was re-engaged and finally he was retrenched in August, 2000. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the

Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employer/respondent to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. At the risk of repetition, per the mandays chart copy of which is Ex. PW1/F, the petitioner had initially been engaged in February, 1991 as a daily wager and he had worked upto June, 1991. He thereafter, as per the mandays chart had worked from July, 1994 upto October, 1995. He thereafter had continuously worked from January, 1996 upto August, 2000. As per the reference the services of the petitioner were terminated in August, 2000. It was the contention of the respondent that he had not terminated the services of the petitioner, but he had abandoned the work. However, this plea of abandonment of the respondent has already been negated by me above. As per the mandays chart Ex. PW1/F, the petitioner had worked for 240 days each in the years 1996 and 1997, 245 days in the year 1998, 230 days in the year 1999 and 226 days in the year 2000. Earlier to it he had worked for 123 days in the year 1991, 182 days in the year 1994 and 234 days in the year 1995. Thus, in his total service in between February, 1991 to August, 2000, he had worked for 1720 days. It is established on record that the petitioner had worked for more than 240 days preceding twelve calendar months from date of his termination, which as per the reference took place August, 2000. It is apparent from the mandays chart that from August, 1999 upto July, 2000, the petitioner had worked for 284 days *i.e.* for 19 days each in the months of August and September, 14 days in the month of October, 20 days in the month of November and 7 days in the month of December for the year 1999 and 27 days in the month of January, 25 days in the month of February, 31 days in the month of March, 30 days in the month of April, 31 days in the month of May, 30 days in the month of June and 31 days in the month of July for the year 2000. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under Section 25-B of the Act. Thus, it was required of the respondent to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondent that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. Shri Pritam Singh Dhanotia (RW1) while under cross-examination was categorical that as per the record no notice under Section 25-F of the Act or any retrenchment compensation had been paid to the petitioner. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

26. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

"25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(g) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(h) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

.....

(7) Where no application for permission under sub- section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

27. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondent, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

28. Learned counsel for the petitioner vehemently argued that the respondent while retrenching the services of petitioner had violated the provisions of Section 25-G of the Act. He has referred to para No. 11 of the claim petition in which the petitioner has specifically mentioned that the persons shown at serial Nos. 217 to 692 in Divisional Level seniority list are juniors to him and whose services have been retained continuously by the respondent. Placed on record by the petitioner is the copy of seniority list of beldar (daily waged) working under I&PH Division Dalhousie, as Ex. PW1/G. The daily waged beldars, as shown in it from serial No. 217 onwards till serial No. 692, were appointed after March, 1991, whereas the services of the petitioner were engaged in February, 1991. Admittedly, as per this document all these persons are shown to have worked with the respondent till the year 2001 and their services were engaged after the engagement of the services of the petitioner. This indicates that persons junior to the petitioner had been serving the respondent/department even after the retrenchment of the petitioner, which as per the reference took place in the month of August, 2000. This indicates that the principle of ‘last come first go’ has not been adhered to by the respondent. Thus, retaining junior persons and retrenching the services of a senior person who happens to be the claimant/petitioner, the respondent had clearly violated the provisions of Section 25-G of the Act. It is, therefore, held that the respondent had violated the provisions of Section 25-G of the Act.

29. Not only this, Shri Pritam Singh Dhanotia (RW1) in his cross-examination admitted that when Smt. Biasa Devi, S/Shri Ramesh Kumar, Baldev Ram and Inder Singh had been re-engaged by the respondent on muster roll, no opportunity was given to the petitioner. He was also categorical that all the aforementioned junior workers are continuously working with the department.

30. There is no denial of the fact that Reference No.55/2016 titled as Mohinder Singh *versus* The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. was decided by this Court on 04.4.2019. While deciding the said reference, it was held by this Court that from May, 1996 upto May, 2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

31. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

32. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is doing days drudgery and is also working under MNREGA. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

33. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

34. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram Vs. State of H.P. and ors.***, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

35. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about six years and actually worked for 1720 days as per mandays chart on record and that his services were disengaged in August, 2000, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given on 15-11-2010. Although, it was claimed by the petitioner that in between he had made various representations to the respondent and in this regard has placed on record the copies of such representations as Mark-X to Mark-Z, but they cannot be taken into consideration having not been duly proved and exhibited on record. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 46 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

36. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No.4 :

37. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

38. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 57/2016
Date of Institution : 20-2-2016
Date of Decision : 16-04-2019

Shri Tilak Raj s/o Shri Ronki Ram, r/o Village Kharnalla, P.O. Tritha, Tehsil Dalhousie, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. B.C. Katoch, A.D.A

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Tilak Raj s/o Shri Ronki Ram, r/o Village Kharnalla, P.O. Tritha, Tehsil Dalhousie, District Chamba, H.P. before the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *vide demand*

notice dated 22-3-2012 regarding his alleged illegal termination of service during November, 2000 *vide* notice dated 21-10-2000 suffers from delay and laches? If not, Whether termination of the services of Shri Tilak Raj s/o Shri Ronki Ram, r/o Village Kharnalla, P.O. Tritha, Tehsil Dalhousie, District Chamba, H.P. by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. during November, 2000 *vide* notice dated 21-10-2000, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster roll basis in the month of July, 1994 by the respondent. He worked as such upto the month of November, 2000. His services were terminated by the respondent in the month of November, 2000 orally, without any reason. While terminating the services of the petitioner, the respondent had retained junior workmen continuously, whose names are S/Sh. Tilak Raj, Brij Lal, Hem Raj, S/Smt. Sumo Devi, Suniti, Sodha Devi and Lata Devi. The services of workmen as shown at serial Nos. 330,360,435, 467, 518, 691 and 692 in the Divisional Level seniority list, were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No one month's notice was served, nor any retrenchment compensation had been paid to the petitioner before terminating his services. His termination was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. After his termination from service, the petitioner had approached the Hon'ble Administrative Tribunal and filed O.A.(D) 40/2011 against the illegal retrenchment and the same was disposed of on 18-3-2002 on the point of jurisdiction. He then had raised demand notice on 9-5-2013, when conciliation proceedings were carried out by the Conciliation-*cum*-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner, who had declined to send a reference to the Court *vide* order dated 14-11-2014. It was challenged by the petitioner before the Hon'ble High Court, when the same was quashed. Subsequently, the Labour Commissioner had made a reference to the Court. S/Shri Baldev Ram, Ramesh Kumar, Inder and Smt. Biasa Devi, being juniors to the petitioner were re-engaged on muster rolls, but no opportunity of re-employment was afforded to the petitioner. It is violative of the provisions of Section 25-H of the Act. Had the services of the petitioner not been terminated illegally, the petitioner would have completed eight years continuous service, with 240 days in each calendar year as on 31-12-2002 and would have become entitled for regularization *w.e.f.* 1-1-2005. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions Sections 25-F, 25-G, and 25- H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"the oral termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and unjustified and he be reinstated with full back wages, seniority, including continuity of service and regularization after eight years of service, with other consequential benefits, to which he may be entitled to".

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar on muster roll basis in the month of July, 1994. He had worked for 147 days in the year 1994, 311½ days in the year 1995, 302 days in the year

1996, 308½ days in the year 1997, 353 days in the year 1998, 341 days in the year 1999 and for 313 days in the year 2000. It is asserted that due to shortage of funds and work in the Division, the respondent was facing huge financial constraints and as a large number of daily waged workers were engaged in the Division, it was impossible to adjust all of them. Due to the provision of less budget and availability of work, the services of the petitioner alongwith 363 other workmen were disengaged after complying with the provisions of Section 25-F of the Act and by adhering to principle of 'last come first go' *w.e.f.* October, 2000. The provisions of Chapter VB of the Act were not attracted against the respondent. It was denied that there was a requirement to serve three months notice to the petitioner prior his termination. No juniors were allowed to work in the same Division, as such there was no violation of the Act. It is asserted that the petitioner had worked intermittently *w.e.f.* July, 1994 upto November, 2000. The petitioner had never completed 240 days in the preceding twelve months, so the provisions of Section 25-B of the Act have not been fulfilled. No notice was required to be served upon the petitioner. It was denied that fictional breaks had been given to the petitioner. S/Shri Tilak Raj, Brij Lal and Hem Raj were engaged as per the orders of the Court, whereas S/Smt. Suno Devi, Suniti, Sodha Devi and Lata Devi were engaged on compassionate grounds.

In these circumstances, the respondent has prayed that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11-8-2017:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 22-3-2012 *qua* his termination of service during November, 2000 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during November, 2000 is/was improper and unjustified as alleged? . . .*OPP.*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tilak Raj appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list as Ex. PW1/B, copy of order dated 18-3-2002 as Ex. PW1/C, copy of demand notice dated 9-7-2010 as Ex. PW1/D, copy of letter dated 25-8-2010 as Ex. PW1/E, copy of demand notice dated 22-3-2012 as Ex. PW1/F, copy of amended demand notice dated 9-5-2013 as Ex. PW1/G, copy of rejection order dated 14-11-2014 as Ex. PW1/H, copy of judgment dated 26-10-2015 as Ex. PW1/I and copy of order dated 25-4-2016 as Ex. PW1/J. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of cheque as Ex. RW1/C, copy of notice as Ex. RW1/D, copies of letters dated 5-11-1997, 6-5-1996, 5-11-1999, 18-9-2000 as Ex. RW1/E to Ex. RW1/H, copy of registered letter as Ex. RW1/I, copies of the orders of the Hon'ble High Court of H.P. as

Ex. RW1/J and Ex. RW1/K, copy of Award dated 1-10-2005 as Ex. RW1/L and copy of order dated 19-4-2001 as Mark-A1 to A3.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹1,50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Tilak Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged as a daily waged beldar in I&PH Division Dalhousie in the month of July, 1994. He admitted that the appointment of a daily wagger is on the basis of muster roll. He had worked with the respondent till the year 2000. He feigned ignorance that after the months of October/November, 2000, the availability of budget and work in Dalhousie Division was reduced. He admitted that due to these reasons, like him the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that notice was given to him and other workers by the respondent. He denied that alongwith the notice compensation had also been given to him. Volunteered that, he had not received the compensation amount. He admitted that S/Smt. Sodha Devi, Lata Devi, Suno Devi and Sunita Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Tilak Raj, Brij Lal and Hem Raj have been re-engaged as per the orders of the Court. He admitted that he owns land, which he cultivates. He refuted that he is not entitled to re-employment and compensation.

11. Ex. PW1/B is the copy of seniority list of Beldar (daily waged) working under IPH Division Dalhousie.

12. Ex. PW1/C is the copy of order dated 18-3-2002 passed in OA(D) 40/2001 by the Hon'ble Administrative Tribunal.

13. Ex. PW1/D is copy of Demand notice pertaining to the petitioner.

14. Ex. PW1/E is the copy of letter dated 25-8-2010 relating to demand notice.

15. Ex. PW1/F is the copy of demand notice dated 22-3-2012 pertaining to the petitioner.

16. Ex. PW1/G is the copy of amended demand notice dated 9-5-2013 relating to the petitioner.

17. Ex. PW1/H is the copy of order dated 14th November, 2014 issued by the Labour Commissioner, Himachal Pradesh.

18. Ex. PW1/I is the copy of judgment dated 26-10-2015 passed in CWP No. 4250/2015 by the Hon'ble High Court of Himachal Pradesh.

19. Ex. PW1/J is the copy of judgment dated 25-4-2016 passed in LPA No.49 of 2016 by the Hon'ble High Court of Himachal Pradesh.

20. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was retrenched, more than 600 workers were working with the department. He also admitted that as per the seniority list (Ex. PW1/B), S/Shri Tilak Raj, Brij Lal, Hem Raj, Brij Lal s/o Shri Chamaru, S/Smt. Suno Devi, Suniti Devi, Madhu Devi, Sodha Devi and Lata Devi are juniors to the petitioner. Volunteered that, the services of S/Tilak Raj, Brij Lal, Hem Raj and Smt. Madhu have been re-engaged as per the orders of the Court and S/Smt. Suno Devi, Sunita Devi and Sodha Devi were kept on compassionate grounds. He was also categorical that all the aforementioned junior workers are continuously working with the department. As per the record no notice of re-employment was given to the petitioner.

21. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

22. Ex. RW1/C is the copy Cheque No.489927 dated 21-10-2000.

23. Ex. RW1/D is the copy of notice issued by the respondent to the petitioner.

24. Ex. RW1/E to Ex. RW1/H are the copies of letters relating to Smt. Suniti Devi, Smt. Suno Devi, Smt. Sodha Devi and Smt. Lata Devi regarding their daily waged appointment on compassionate grounds.

25. Ex. RW1/I is the copy of receipt.

26. Ex. RW1/J is the copy of judgment dated 27-9-2007 passed in CWP No.1240 of 2005 by the Hon'ble High Court of Himachal Pradesh.

27. Ex. RW1/K is the copy of judgment dated 27-8-2007 passed in CWP No.1239 of 2005 by the Hon'ble High Court of Himachal Pradesh.

28. Ex. RW1/L is the copy of the Award dated 1-10-2005 passed in Reference No.46/2002 (RBT No.287/04) by this Court.

29. Mark-A1 to Mark-A3 are the copies of order dated 19-4-2001 passed in OA (D) 690/2000 and 697/2001 by the Hon'ble Administrative Tribunal.

30. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. RW1/B produced by the respondent is not disputed by the petitioner. However, its perusal discloses that the services of the petitioner were initially engaged in the year 1994 by the respondent.

31. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 26-11-2000 (afternoon) after issuing the notice, copy of which is Ex. RW1/D. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged, being surplus, due to the non-availability of work and funds. As already mentioned, Ex. PW1/B is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31-12-2001. The name of the petitioner figures at serial No. 332 of the list.

32. It is the admitted case of the parties that S/Smt. Suno Devi, Suniti Devi and Sodha Devi were appointed on compassionate grounds. A note in this regard has also been given on Ex. PW1/B. Anyhow, as per this seniority list of beldar (daily waged) working under I&PH Division Dalhousie, Smt. Sunit Devi was appointed by the respondent in December, 1996, whereas Sodha Devi was appointed by the respondent in November, 1999, while Smt. Suno Devi was appointed in May, 1996. The dates of deaths of their husbands, namely, S/Shri Ashok Kumar, Hans Raj and Tejo Ram have not come on the file. Admittedly, Smt. Sodha Devi, Smt. Suno Devi and Smt. Suniti are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. Shri Pritam Singh Dhanotia (RW1) in his substantive evidence categorically admitted that these juniors alongwith others are still working continuously with the department. The months of engagement of Smt. Sodha Devi, Smt. Suno Devi and Smt. Suniti Devi are November, 1999, May, 2000 and December, 1996 respectively. At the cost of reiteration, I will like to add that the year of initial appointment of the petitioner as per Ex. RW1/B is 1994. There is nothing on the record to show that the deceased husbands of S/Smt. Sodha Devi, Suniti Devi and Suno Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

33. Not only this, Shri Pritam Singh Dhanotia (RW1) in his cross-examination admitted that S/Shri Hem Raj, Brij Lal, Brij Lal s/o Shri Chamaru and Smt. Madhu Devi are also junior to the petitioner and they are also working continuously with the department. The names of two of the aforesaid workmen, namely, Shri Hem Raj and Shri Brij Lal s/o Shri Chamaru Ram figure at serial Nos. 435 and 360 of the seniority list Ex. PW1/B, whereas that of the petitioner figures at serial No. 332. They both are juniors to the petitioner, as their months of initial appointment are shown to be December, 1995 and January, 1995 respectively. Smt. Madhu Devi is also junior to the petitioner, whose name figures at serial No. 531 of Ex. PW1/B and she is shown to have been appointed by the respondent in February, 1997.

34. There is no denial of the fact that Reference No.55/2016 titled as Mohinder Singh *versus* The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. was decided by this Court on 04-4-2019. While deciding the said reference, it was held by this Court that from May, 1996 upto May, 2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh

hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

35. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

36. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

37. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

38. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

39. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily

wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about seven years and actually worked for 2075 days as per mandays chart on record and that his services were disengaged in November, 2000, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given on 22-3-2012. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 49 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

40. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,50,000/- (Rupees one lakh fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4 :

41. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

42. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16yth day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 438/2015
Date of Institution : 29-10-2015
Date of Decision : 17-4-2019

Shri Surinder Bhandari s/o Shri Pratap Singh Bhandari, r/o Village Langhu, P.O. Gandhigram, Tehsil Baijnath, District Kangra, H.P. . . *Petitioner.*

Versus

The Block Medical Officer, Mahakal, District Kangra, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. S. S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether appointment of Shri Surinder Bhandari s/o Shri Pratap Singh, r/o Village Langhu, P.O. Gandhigram, Tehsil Baijnath, District Kangra, H.P. by the Block Medical Officer Mahakal, District Kangra, H.P. without wages as driver *w.e.f.* 01-04-2004 to 08-01-2008 and thereafter termination of his services *w.e.f.* 09-01-2008, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was engaged as a driver *w.e.f.* 1.4.2004 and was deployed as such on vehicle No. HP-53A-0188 at Primary Health Centre Termehar (Lohardi), being under the immediate control of the Block Medical Officer, Mahakal. He had discharged his duties to the best of his ability and without any complaint. Initially, he had been engaged without any remuneration/salary, but was given the assurance by the respondent that he would be absorbed against the vacant post of a driver and if it was not possible, then would be paid the wages at the minimum prescribed rate for the period of service rendered by him from 1.4.2004 to 8.1.2008. On this assurance, the petitioner had continued to discharge his duties during the aforesaid period, without any breaks. His services were utilized during this period in various offices alongwith the above numbered vehicle, *i.e. vide* office order No. 653-59 dated 1.10.2004 was deputed in the office of Tehsildar for BPL survey, *vide* letter No.1336 dated 27.9.2004 in Mahindra Service Station, Maranda for maintenance of vehicle, *vide* letter No. 1363 dated 29.4.2004 for BPL survey, *vide* letter dated 6.9.2004 for special summary revision of electoral rolls in the office of SDM, Baijnath, *vide* letter No. 1482-83 dated 14.12.2005 for Panchayat elections, *vide* letter No. 290-91 dated 25.2.2006 at the disposal of Tehsildar Baijnath on account of Shivratri mela and *vide* letter of the respondent to provide medial aid for the paragliders at Beer during the Pre-World Cup Paragliding. The petitioner during his services with the respondent had maintained the log book of the vehicle and he was also issued an identity card. His services were terminated *w.e.f.* 9.10.2008 by the respondent without complying with the provisions of the Industrial Disputes Act. No notice had been served upon him, nor any retrenchment compensation paid. He had

completed more than 240 days in each calendar year as well as the last twelve calendar months preceding his illegal termination. A legal notice had been served by him upon Secretary (Health) to the Government of Himachal Pradesh, Director, Health Services, CMO Dharamshala and BMO Baijnath to pay him the wages for the period he had worked as a driver. The respondent had only responded to the notice. After the termination of his services, the petitioner had made representation to the Chairman, Himachal Pradesh Wool Federation. It was forwarded to the Chief Minister, Himachal Pradesh, but of no avail. A representation had also been made to the Minister Town and Country Planning and Urban Development, but it was not responded to. During his service, the respondent had written a letter to CMO Dharamshala regarding the posting of drivers at PHC Mahakal and Termehar and CHC Chadiyar, against vacant posts, but no action was taken. After terminating his services, the department has appointed two drivers against vacant posts, without affording any opportunity to the petitioner. Similar duties were performed by the petitioner as that by Shri Parkash Chand, so he was entitled to the regular pay scale with grade pay for period from 1.4.2008 to 8.1.2008 alongwith interest @12% per annum.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) the amount of wages be determined *w.e.f.* 1.4.2004 to 8.1.2008, as per the minimum wages fixed by the State Government from time to time, alongwith interest @12% per annum.
- (ii) the respondent be directed to pay similar wages as paid to Shri Parkash Chand on the principle of equal pay for equal work.
- (iii) the illegal termination order dated 9.1.2008 be set aside and the respondent be directed to reinstate him with full back wages, seniority, continuity in service and other consequential benefits.
- (iv) the respondent be directed to pay Rs. 15,000/- to him as cost of litigation and any other relief as deemed fit”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainable and that the petitioner was estopped by his own act and conduct, were taken.

On merits, it has been asserted that the petitioner had worked as a driver at PHC Tarmehar Lohardi under BMO Mahakal *w.e.f.* 1.4.2004 to 8.1.2008 on voluntary basis, as per his own request *vide* application dated 2.4.2004. He was never engaged as a driver on regular basis, nor any appointment orders has been issued to him by the respondent. The petitioner of his own had moved an application to the respondent to engage him as a driver without any salary/remuneration. No assurance either oral or in writing had been given to the petitioner for his absorption as a driver against a vacant post on a regular pay scale. The services of the petitioner had never been utilized continuously. The vehicle had never remained under the permanent control of the petitioner. During the elections, as per the requisition the vehicle had been handed over to the Returning Officer (SDM), Baijnath, *vide* a letter. The charge of the vehicle had remained with Shri Onkar Krishan, the driver of BMO Mahakal. He had handed over the vehicle to Shri Sikander, driver of CDPO, Baijnath. It is mandatory to carry an identity proof whenever any officer/official is sent or deputed for performing sensitive duties, like election duty, IPL match duty etc. The question of disengagement of the petitioner did not arise, as he had never been issued an appointment letter. The correspondence made for the posting of the drivers has no relevance.

In these circumstances, the respondent prays that the petition in hand be dismissed with special costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 21.12.2016:

- (1) Whether appointment of petitioner by respondent *w.e.f.* 01.04.2004 to 08.01.2008 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) Whether termination of services of the petitioner by the respondent *w.e.f.* 09.01.2008 is/was illegal and unjustified as alleged? . . .*OPP.*
- (3) If issue No. 1 & issue No. 2 or both are provide in affirmative to what relief petitioner is entitled to? . . .*OPP.*
- (4) Whether the present claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
- (5) Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR.*

Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Surinder Bhandari appeared as PW1 and tendered in evidence his statement by way of examination-in-chief, copy of certificate of merit dated 18.1.2005 as Ex. PW1/A, copy of letter dated 30.5.2008 as Ex. PW1/B, copy of office order dated 25.2.2006 as Ex. PW1/C, copy of letter dated 6th September, 2004 as Ex. PW1/D, copy of letter dated 29.9.2004 as Ex. PW1/E, copy of identity card as Ex. PW1/F, copies of certificates dated 18.5.2005, 7.3.2005 as Ex. PW1/G & PW1/H, copy of certificate of merit date 18.5.2005 as Ex. PW1/I, copy of notice dated 1.5.2008 as Ex. PW1/J, copy of notice dated 16.5.2008 as Ex. PW1/K, copy of officers and officials of health department as Ex. PW1/L and copy of driving license as Ex. PW1/M. The petitioner also examined one Shri Deepak Kapoor as PW2 and tendered in evidence copy of log book as Ex. PW2/A1 to A85. The respondent examined one Dr. Subhash Chand Thakur, as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of order dated 16.3.2007 as Ex. RW1/B, copy of letter dated 16.11.2007 as Ex. RW1/C and copy of application Ex. RA.

7. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Surender Bhandari (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that on 2.4.2004 he had moved an application (Ex. RA) to BMO Baijnath for his voluntary service as a driver and that the application bears his signature in red circle. He denied that from 5.4.2004 to 8.1.2008 he had voluntarily worked as a driver intermittently at PHC Tarmehar (Lohardi), falling under BMO Mahakal. Volunteered that, he had worked from 1.4.2004 to 8.1.2008. He denied that without any salary/honorarium, he had agreed to work. He denied that he had never worked on vehicle HP-53A-0188 on regular basis. He was categorical that during the elections the vehicle had been requisitioned by SDM Baijnath. He denied that the vehicle had been handed over by Shri Onkar Krishan the driver to Shri Sikander the driver of CDPO Bainjath. Self stated that at that time he was deputed on another vehicle. He clearly admitted that he was not possessed of any order for being deputed on the other vehicle. He specifically admitted that no appointment letter had been issued to him by the department. He owns about four kanals of land, which he cultivates. He also works as an insurance agent. He categorically admitted that he of his own had moved an application for working as a driver. Volunteered that, he had only agreed to work as such for one month. He specifically admitted that he was not forced to do any work.

11. Ex. PW1/A is the copy of certificate of merit pertaining to the petitioner.

12. Ex. PW1/B is the copy of legal notice dated 30.5.2008 issued by CMO Kangra at Dharamshala.

13. Ex. PW1/C is the office order dated 25.2.2006 issued by SDM (Civil) Baijnath.

14. Ex. PW1/D is the copy of requisition order dated 6th September, 2004 issued by Electoral Registration Officer (SDM) Baijnath.

15. Ex. PW1/E is the copy of letter dated 29.9.2004 regarding requisition order for vehicle in connection with the work of BPL survey.

16. Ex. PW1/F is the copy of identity card relating to the petitioner.

17. Ex. PW1/G to Ex. PW1/I are the copies of the certificates pertaining to the petitioner.

18. Ex. PW1/J and Ex. PW1/K are the letters dated 1.5.2008 and 16.5.2008 regarding notice under Section 80 of the Code of Civil Procedure.

19. Ex. PW1/L is the detail of officers and officials of Health Department who had participated in providing medical aid to paragliders of Pre World Paragliding at Bir from 14.10.2005 to 19.10.2005.

20. Ex. PW1/M is the copy of driving license of the petitioner.

21. PW2 Shri Deepak Kapoor placed on record the copy of the log book of vehicle HP-53A-0188 as Ex. PW2/A-1 to Ex. PW2/A-85. In the cross-examination he stated that he cannot identify the signatures of any of the drivers on the log book. He admitted that he is not aware who all were the drivers on the vehicle, as per the log book.

22. Ex. PW2/A1 to Ex. PW2/A85 are the copies of log book pertaining to vehicle No.HP-53A-0188.

23. Conversely, Dr. Subhash Chand Thakur, Block Medical Officer, Mahakal testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that as per the record the petitioner had driven vehicle No. HP-53A-0188 from 1.4.2004 to 8.1.2008. Thereafter stated that he had not driven it regularly. He feigned ignorance as to who had signed the log book. He admitted that there was no complaint against the petitioner that he had stolen the afore numbered vehicle. He also admitted that for the aforementioned period no salary was paid to the petitioner to drive the vehicle. Volunteered that, the petitioner to work voluntarily had himself moved an application Ex. RA. He admitted that identity card Ex. PW1/F had been issued to the petitioner by BMO Mahakal. He clearly admitted that no one can be appointed to work voluntarily as a driver on a government vehicle. He further admitted that no permission had been obtained from the higher authorities that the petitioner had been kept on voluntarily basis. He specifically admitted that BMO of his own cannot keep a driver. He specifically denied that from April, 2004 uptil January, 2008 the vehicle had remained in the control/custody of the petitioner.

24. Ex. RA is the copy of application pertaining to the petitioner.

25. Ex. RW1/B is the copy of office order dated 16.3.2007 issued by BMO, Mahakal.

26. Ex. RW1/C is the copy of letter dated 16.11.2007 regarding list of charge of vehicle No.HP-53A-0188.

27. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

28. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent. Respondent denied this fact and claimed that the petitioner was never issued any appointment letter by him and that he had rendered voluntary services as a driver. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent. Rather, from the evidence available on record including the statement of the petitioner (PW1), it can be gathered that the petitioner was never appointed in any capacity at any point of time by the

respondent. The petitioner was categorical in his substantive evidence that no appointment letter for work had ever been issued to him by the department. He, admittedly, by moving an application (Ex. RA) to BMO Baijnath, had agreed to render voluntary services as a driver. The petitioner in his substantive evidence was categorical that he of his own had moved an application to work voluntarily as a driver. It was also his admission that he had never been forced to do any work. Then, it was itself suggested by the petitioner to Dr. Subhash Chand Thakur (RW1) that he had never been paid any salary to drive the vehicle for the alleged period. He admitted the suggestion. Putting of this suggestion and its admission by the respondent leaves no doubt in mind that no salary at all had ever been paid to the petitioner by the respondent for the period he allegedly had driven the vehicle. In view of these facts, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that the relationship of employer and employee/workman existed between the parties.

29. Our own Hon'ble High Court in case titled as *Agya Ram Vs. State of H.P., 2016 (sup.)Him.L.R. 2821* has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent. No appointment letter issued by respondent in his favour has been placed on record by the petitioner. Rather, as discussed above, no appointment letter had ever been issued to him by the department, nor any salary was being paid to him by the respondent. In *Mahindra and Mahindra Vs. The Presiding Officer and Anr., 2013 (1) LLJ 186*, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by the respondent, so he cannot be said to be an employee of the respondent.

30. No mandays chart of the petitioner is there on the file to establish that he worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case. It is not the case of the petitioner that at the time of the termination of his services, any person junior to him was retained in service by the respondent. Although, it is claimed by the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondent but, however, it has remained a mere saying on record. Except for the self serving and oral testimony of the petitioner, there is no documentary evidence on record to show that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

31. Faced with the situation, it was contended for the petitioner that since in the identity card, copy of which is Ex. PW1/F, the name of the respondent has been mentioned, as such there is relationship of employer and employee between the petitioner and the respondent. This cannot be accepted. Merely because the signature and stamp of the respondent is there on the identity card (Ex. PW1/F), that does not mean that the petitioner was the employee of the respondent. In case titled as *Chandrakala Vs. Marathwada Medical Research and Rural Development Institution Ltd. and ors., 2016 (1) ALL MR 350*, it has been laid down by the Hon'ble Bombay High Court that identity cards cannot be indicative of such relationship since identity card is not decisive/determinative piece of evidence of employer-employee relationship.

32. As already mentioned, the petitioner (PW1) in his cross-examination admitted that he was never issued any appointment letter by the department and that by moving an application he had rendered voluntary services as a driver. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

33. These issue are decided accordingly and against the petitioner and in favour of the respondent.

Issues No. 4 to 5 :

34. Being interlinked and to avoid the repetition, both theses issues are also taken up together for discussion and disposal.

35. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has a cause of action, nor he has the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive the undue advantage(s).

36. These issues are also decided against the petitioner and in favour of his opponent.

Relief :

37. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified as Rs. 3,000/-. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 625/2016
Date of Institution : 01-9-2016
Date of Decision : 18-4-2019

Shri Suresh Kumar s/o Shri Chatter Singh, r/o Village Dali, P.O. Rajnagar, Tehsil and District Chamba, H.P.*Petitioner.*

Versus

1. The Managing Director, H.P. Forest Corporation Limited, Shimla, H.P.

2. The Divisional Manager, H.P. Forest Corporation Limited, Chamba, District Chamba, H.P. . . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent(s) : Sh. Gaurav Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Suresh Kumar s/o Shri Chatter Singh, r/o Village Dali, P.O. Rajnagar, Tehsil and District Chamba, H.P. during May, 1994 *vide* notice dated 02.04.1994 by (1) The Managing Director, H.P. Forest Corporation Limited, Shimla, H.P. (2) The Divisional Manager, H.P. Forest Corporation Limited, Chamba, District Chamba, H.P., who had worked on daily wages and has raised his industrial dispute after about 11 years *vide* demand notice dated 07.01.2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a Timber Watcher by the respondents in October, 1987 at Tissa unit and thereafter he worked continuously without any break in service till the year 1994. On 2.4.1994 the petitioner was served notice purportedly under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred ‘the Act’ for short). The service of the petitioner was dispensed with. The petitioner had then preferred petition against the aforesaid notice before the Hon’ble Administrative Tribunal *vide* O.A. No. 211/1994. Pending the aforesaid petition, the services of the petitioner were dispensed with *vide* order dated 21.4.1994 by the respondents, but primarily on the ground of negligence, though the question of misconduct had not been proved and no reasonable opportunity had been afforded to the petitioner. The aforesaid action of the respondents is stated to be not only illegal but against the basic principle of natural justice. The original application preferred by the petitioner by filing O.A. No. 211/1994 before the Hon’ble Administrative Tribunal was dismissed *vide* order dated 26.8.2004 on the grounds of jurisdiction with the liberty to the petitioner to approach the competent forum. The petitioner had then raised a demand notice dated 7.1.2005, when conciliation proceedings had taken place before the Labour Officer-*cum*-Conciliation Officer, Dharamshala. Report under Section 12(4) of the Act had been sent by the Labour Officer-*cum*-Conciliation Officer to the Labour Commissioner, who had not made a reference to the Court. The petitioner then had preferred Civil Writ Petition No.1372/2008 before the Hon’ble High Court of Himachal Pradesh, when the order dated 21.9.2007 passed by the Labour Commissioner was quashed and the Labour Commissioner was directed to make a reference to this Court. Immediately thereafter the Labour Commissioner had made a reference to this Court. The action of the respondent is stated to be in violation of the provisions of Section 25-F of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“(i) his disengagement by the respondents in May, 1994 *vide* notice dated 2.4.1994 be ordered to be quashed and he be re-engaged on the same post of Timber Watcher as

at the time of termination with continuity of service, back wages and consequential benefits.

(v) any other relief be also be passed in his favour as deemed fit by the Court”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, limitation and that petition lacked material particulars, have been taken.

On merits, it was admitted that the petitioner was engaged as Timber Watcher on daily wages *w.e.f.* October, 1987. It is admitted that the petitioner was served notice under Section 25-F of the Act on 2.4.1994 for negligence on his part for having caused a huge loss to the respondents/ corporation. It is asserted that the petitioner had been engaged for the protection of the corporation property and to perform the duty honestly in the interest of Forest Corporation. However, he had failed to do so and due to his negligence loss had been suffered by the corporation. The petitioner was afforded sufficient opportunity and after a detailed and proper inquiry, the termination letter was issued. The CCS (CCA) Rules were not applicable to the daily waged workers and they are only applicable to the regular employees of the department/ corporation. Sufficient opportunity of being heard was afforded to the petitioner. Since the respondents/corporation had suffered heavy loss due to negligence of the petitioner, his services were terminated. A proper procedure for terminating the services of the petitioner had been followed.

In these circumstances, the respondents prayed that the petition in hand be dismissed with special costs.

4. No rejoinder has been filed by the petitioner.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 9.10.2016:

- (1) Whether termination of services of petitioner by the respondents during May, 1994 is/was improper and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the present claim petition is not sustainable in the eyes of law? . . .*OPR.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (5) Whether the claim petition is barred by limitation as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Suresh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of notice dated 2.4.1994 as Ex. PW1/B, copy of letter dated 21.4.1994 as Ex. PW1/C, copy of order dated 26.8.2004 as Ex. PW1/D, copy of demand notice as Ex. PW1/E, copy of order dated 21.9.2007 as Ex. PW1/F, copy of judgment dated 17.5.2006 as Ex. PW1/G, copy of Award dated 7.12.2011 as Ex. PW1/H

and copy of inquiry report as Mark-A. The respondent examined one Shri Suman Ohri as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of notice dated 2.4.1994 as Ex. RW1/B and copy of receipt dated 2.4.1994 as Ex. RW1/C. The respondents also examined one Shri C.R. Premi as RW2, who tendered in evidence copy of inquiry report as Ex. RW2/A.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Suresh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a Timber Watcher on daily wage basis. He was also categorical that he was kept as Timber Watcher in lot No. 11/93-94 Himgiri Jhaura Forest. He also clearly admitted that as a Timber Watcher he maintained the record of felling and cutting of the trees etc. This record was being entered into a register. He admitted that on the intervening night of 18/19th November, fire had broken out in lot No. 11/93-94, causing a huge loss. He admitted that inquiry was conducted by Shri C.R. Premi alongwith others and in which he and Shri Madan Lal had been associated. During the investigation, their statements were recorded. He clearly admitted that on 29.1.1994 the inquiry report had been submitted. He denied that the record regarding felling and cutting of trees, which had been produced in investigation, was found to be not correct. He admitted that he was served a notice under Section 25-F of the Act on 2.4.1994. He also clearly admitted that on 7.1.2005, he had raised the demand notice. It was specifically denied by him that sufficient opportunity of being heard had been given to him by the respondents. He also specifically denied that due to his negligence a huge financial loss was caused to the respondents/corporation. It was further denied by him that he was not entitled the seniority and continuity in service.

11. Ex. PW1/B is the attested copy of letter dated 2.4.1994 regarding termination of the services of the petitioner under Section 25-F of the Act.

12. Ex. PW1/C is the attested copy of letter dated 21.4.1994 regarding termination of the services of the petitioner under Section 25-F of the Act.

13. Ex. PW1/D is the copy of order dated 26.8.2004 passed by the Hon'ble Administrative Tribunal in OA No. 211/1994.

14. Ex. PW1/E is the copy of demand notice pertaining to the petitioner.
15. Ex. PW1/F is the copy of letter dated 21.9.2007 regarding demand notice and report under Section 12(4) of the Industrial Disputes Act, 1947.
16. Ex. PW1/G is the copy of order dated 17.5.2016 passed in CWP No.1372/2008 by the Hon'ble High Court of Himachal Pradesh.
17. Ex. PW1/H is the copy of Award dated 7.12.2011 passed in Reference No.42/2010 by this Court.
18. Conversely, Shri Suman Ohri, Divisional Manager, HPSFC Limited, Forest Working Division, Chamba, H.P. testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that the petitioner had been kept at Tissa unit of HPFC in October, 1997. He also admitted that prior to 2.4.1994 the inquiry was conducted against the petitioner by Shri C. R. Premi, Divisional Manager, Head Quarter. He also admitted that a report dated 29.1.1994 had been submitted. He also clearly admitted that alongwith the petitioner Shri Madan Lal was also working in the depot. He was not aware that the petitioner had been removed by giving a notice, as given to Shri Madan Lal. He was also not aware that against the issuance of notice the petitioner and Shri Madan Lal had approached the Hon'ble Administrative Tribunal. He showed ignorance that during the pendency of the petition, on 21.4.1994 a notice was issued to the petitioner alongwith a cheque amounting to Rs. 2,770/- and that he had refused to receive the same. He feigned ignorance that the petition was decided on 28.8.2004, whereby the petitioner was giving the liberty to approach the appropriate forum. He did not know that the petitioner had sent a demand notice and that the prayer made by the petitioner had been rejected by the Labour Commissioner. He was also not aware that thereafter the petitioner had filed a Civil Writ Petition before the Hon'ble High Court of Himachal Pradesh, which was decided in his favour. He also showed his ignorance to the fact that the case had been decided in favour of Shri Madan Lal by this Court. He further showed his ignorance that no appeal was preferred against that order and that it had attained finality. He also showed his ignorance that the petitioner and Shri Madan Lal had not been associated in the inquiry by the Inquiry Officer. Volunteered that, Shri C. R. Premi can tell about it. He denied that there was no negligence of the petitioner and Shri Madan Lal in the fire incident. He admitted that Shri Madan Lal was still working in the department. He was also categorical that as per the record, the petitioner and Shri Madan Lal had been served notices on same day and that they had been removed on the same day. He feigned ignorance that since the time of his termination, the petitioner is not gainfully employed. He specifically denied that the petitioner had wrongfully been removed from service.
19. Ex. RW1/B is the copy of letter dated 2.4.1994 regarding termination of the services of the petitioner as per Section 25-F of the Act.
20. Ex. RW1/C is the copy of receipt dated 2.4.1994.
21. Mark-A is the copy of cheque dated 21.4.1994 amounting to Rs. 2,770/- pertaining to the petitioner.
22. RW2 Shri C.R. Premi testified that he was appointed as Inquiry Officer, when he had visited the spot and had recorded the statements of staff members and others. He had prepared the report (Ex. RW2/A). He had associated the concerned officers and officials in the inquiry and had recorded their statements. In the cross-examination, he feigned ignorance as to

on which dates he had conducted the inquiry. Volunteered that, he can tell it after seeing the record. He conducted the inquiry on 6.1.1994. He has not mentioned in the report on which dates he had recorded the statements. He has also not mentioned in his report as to on which date the statement of the petitioner was recorded. He specifically denied that neither he had conducted the inquiry, nor had associated the petitioner in it. He specifically denied that no report had been submitted by him on 29.1.1994.

23. Ex. RW2/A is the copy of inquiry report dated 29.1.1994.

24. Ex. RW2/B is the copy of letter dated 8.5.1994 regarding loss of timber lying in Lot No.11/93-94 Himgiri, Jhaura forest due to fire.

25. The sum and substance of the pleaded case of the respondents is that the services of the petitioner had been terminated on account of huge loss having been suffered by the respondents/corporation due to the negligence on the part of the petitioner during the course of his employment. The respondent, therefore, had resorted to invoking the provisions of Section 25-F of the Act.

26. It is an admitted fact that the services of the petitioner were terminated by the respondents after issuing the notice, copy of which is Ex. PW1/B (also Ex. RW1/B). Anyhow, the perusal of this notice reveals that the same was not a simplicitor notice under Section 25-F of the Act, but was a notice reporting the negligence of the petitioner, whereby a huge loss had been caused to the Himachal Pradesh State Forest Corporation. A similar notice was again issued to the petitioner on 21.4.1994, copy of which is placed on record as Ex. PW1/C.

27. It is the own pleaded case of the respondents that the termination of the services of the petitioner was primarily on account of the negligence attributed to him, which had caused a substantial loss to the corporation. Although, the services of the petitioner could have been dispensed with by the respondents by simply serving a notice upon him under Section 25-F of the Act, but in that case the disengagement was not to be based on a punitive action so contemplated against the petitioner. However, if a punitive action was required to be taken against him, without serving a simple notice under Section 25-F of the Act and even if he was not liable to be proceeded against under the CCS(CCA) Rules, which are claimed to be applicable only to the regular employees, in that eventuality a reasonable opportunity of being heard ought to have been afforded to the petitioner. A punitive action could not have been taken against him under the guise of a notice under Section 25-F of the Act. Though, the respondents as per their pleadings, as well as ocular and documentary evidence on record, have claimed that the matter had been enquired into and in this regard a copy of inquiry report Ex. RW2/A has been placed on record through the testimony of RW2 Shri C.R. Premi but, however, it is my humble opinion that once an action had to be taken for the negligence and misconduct on the part of the petitioner, he had to be afforded an opportunity of being heard to explain the misconduct. A perusal of the notice dated 2.4.1994 would reveal that no opportunity had been granted to the petitioner to explain his misconduct. It appears that the petitioner had been sought to be condemned unheard, which is against the cardinal principle of law and natural justice. No doubt, an inquiry had been initiated against the petitioner, but the same was much prior to the issuance of notice under Section 25-F of the Act, *i.e.* on 29.1.1994. Before any punitive action by issuance of notice under Section 25-F of the Act was taken against the petitioner, he had to be heard. No such opportunity of being heard was ever afforded to the petitioner by the respondents. Though, a fact finding inquiry appears to have been got conducted by the respondents through Shri C. R. Premi (RW2) and who had submitted an inquiry report, copy of which is Ex. RW2/A, but from the substantive evidence of Shri C.R. Premi (RW2), it is evident that a notice had only been issued to the petitioner and other officials on 8.8.1994. This is also evident from the copy of

notice placed on record as Ex. RW2/B. However, the inquiry report (Ex. RW2/A) is prior in time to the notice, being dated 29.1.1994. Therefore, the statement of Shri C. R. Premi (RW2) and the inquiry report prepared by him, copy of which is placed on record as Ex. RW2/A, are of no help to the respondents, as no opportunity was afforded to the petitioner to explain his alleged misconduct during the alleged fact finding inquiry. In these circumstances, I am of the view that the respondents could not have resorted to the provisions of Section 25-F of the Act for dispensing with the services of the petitioner in an arbitrary manner. The question of misconduct against the petitioner had to be proved by the respondents by leading cogent, convincing and reliable evidence on the file and a reasonable opportunity ought to have been afforded to him to explain his misconduct. So was not done by the respondents in the case on hand. Therefore, the termination of the services of the petitioner is illegal and unjustified.

28. These issues are decided in favour of the petitioner and against the respondents.

Issues No. 3 and 4 :

29. Being interlinked and to avoid the repetition, both these issues are also taken up together for discussion and disposal.

30. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable and sustainable in the eyes of law. Hence, these issues are decided in favour of the petitioner and against the respondents.

Issue No. 5 :

31. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. In view of the trite laid down in this ruling, it cannot be said that the petition is barred by limitation. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in ***Liaq Ram Versus State of H.P. & others***, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

33. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns 10 bighas of land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

34. This issue is also decided in favour of the petitioner and against the respondent.

Relief :

35. As a sequel to my findings on issues No. 1 and 2 above, the instant claim petition succeed in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of demand notice *i.e.* 07.01.2005, *except back wages*. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official Gazette. File after due completion be consigned to the record room.

Announced in the open Court today this 18th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 799//2016
Date of Institution	: 19-11-2016
Date of Decision	: 22-04-2019

Shri Nek Ram s/o Shri Desh Raj, r/o Village & Post Office Dhanag, Tehsil Baijnath, District Kangra, H.P. *. .Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Himachal Pradesh, Shimla-171 001.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *. .Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
For the Respondent(s)	: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Nek Ram s/o Sh. Desh Raj r/o Village & Post Office Dhanag, Tehsil Baijnath, Distt. Kangra, H.P. *w.e.f.* 1-4-2006, by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-1 and (2) the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis during 1994, to 31-3-2006 and has raised hi industrial dispute *vide* demand notice dated 15-6-2015 after more than 9 years, without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. After the receipt of the abovementioned reference, a corrigendum dated 23rd January, 2019 was received from the appropriate government which reads:

"Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even No. dated 28-10-2016 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the name and father's name of the workman in the said notification Therefore, the name and father's name of the workman may be read as "Shri Nek Ram alias Desh Raj s/o Shri Dhogri Ram" instead of "Shri Nek Ram s/o Shri Desh Raj".

3. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as a daily waged Beldar on muster-roll basis by the respondent in the year 1994, without any appointment order and settlement of terms and conditions. On the verbal orders, he was deputed by the respondent to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sunil Kumar. He had worked continuously with the respondent without any breaks upto 31.12.2005 and had completed 240 days in each calendar year. During the period from the year 2000 upto 31.12.2005, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondent/department in the year 2001, with prior notice. On his asking, he was told that the Government had decided to close IGCP, Palampur w.e.f. 31.3.2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of 'last come first go' as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31.12.2006.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"(i) the illegal retrenchment order in the year 2001 be set aside and the respondent be directed to reinstate him with full back wages, continuity and seniority in service and other consequential service benefits.

(ii) the respondent be directed to regularize his services as per the policy of the State Government.

(iii) any other relief, as deemed fit by the Court, be also granted".

4. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of

maintainability, that petition was bad on account of delay and laches and for non-joinder of necessary parties and that when the project is closed due to non-availability of funds, the employees of the said project have to go alongwith the closed project, have been taken.

On merits, it is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wager during the year 1994 by Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as and agriculturist and is gainfully employed.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

5. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

6. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18.10.2017:

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 01.04.2006 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? . . .*OPR.*

Relief.

7. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Nek Ram @ Desh Raj appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.200, 29.2.2004, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K and copies of RTI information dated 4.1.2011 & 22.9.2011 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.009 as Ex. PW1/N, copy of appeal order dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q and copy of RTI information dated 14.8.2014 as Ex. PW1/R. The

respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

8. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Issue No. 5	: Not pressed
Relief.	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Shri Nek Ram @ Desh Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in a project, but had worked in the forest department. He denied that he was engaged in the year 1994 in the said project. He also denied that he was not kept at work by the forest department in the year 1994. He further denied that earlier to it he had not worked in the forest department. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He denied that he had worked in the said project upto the year 2005. He showed his ignorance that the project was a German aided project. He specifically denied that he had neither been kept nor removed from service by the department. He admitted that he had raised the demand notice in June, 2015. He categorical denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates.

12. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

13. Ex. PW1/C is the copy of letter dated 1.1.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

14. Ex. PW1/D is the copy of letter dated 15.12.2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo- German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

16. Ex. PW1/F is the copy of letter dated 15.2.2006, being information regarding closure of Indo-German Changer Project Palampur.

17. Ex. PW1/G is the copy of letter dated 29.4.2009 regarding appointment of daily wage drivers- Information under RTI thereof.

18. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

19. Ex. PW1/I is the copy of letter dated 2.1.2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

20. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

21. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

22. Ex. PW1/M is the copy of letter dated 22.9.2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

23. Ex. PW1/N is the copy of order dated 1.12.2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

24. Ex. PW1/O is the copy of order dated 28.2.2013 passed by the learned Additional District Judge-II, Kangra at Dharamshala in Civil Appeal No.271-P/2010.

25. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

26. Ex. PW1/Q is the copy of Award dated 2.12.2008 passed in Reference No.117/2007 by this Court.

27. Ex. PW1/R is the copy of letter dated 14.8.2014 being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

28. Conversely, Shri B. S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster-roll. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forest and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that, the Chairman of the governing body was Secretary Forest. He was categorical that the Conservator had been nominated as Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record, the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as

and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto the year 2006, the petitioner had continuously worked for more than 240 days. Volunteered that, he had worked upto the year 1999. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard was available. It was admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was also admitted by him that a case had been lodged by him in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. He further admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per the Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

29. Ex. RW1/B is the copy of mandays chart relating to the petitioner and others.

30. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. It was asserted by the petitioner that he was a workman of the respondent. The respondents denied this fact and claimed that the petitioner was never engaged by the department and took the stand that he was employed in Indo-German Changer Project, Palampur, which was a foreign aided project. There is no denial of the fact that the aforesaid project was under the supervision and control of the senior government officers, headed by Secretary Forest to the Government of Himachal Pradesh. It is an admitted fact on the part of the respondents that the above named project had been closed in the year 2006. RW1 Shri B.S. Yadav, while under cross-examination was categorical that on the closure of the project, the Eco Development Society, Palampur had handed over the entire record of this project to the respondents. As per the respondents, the petitioner cannot be re-engaged without prior approval of the Government of Himachal Pradesh. Admittedly, no appointment letter had ever been issued to the petitioner, nor any terms and conditions of his services were settled. RW1 Shri B.S. Yadav clearly admitted in his substantive evidence that as per the record handed over by the society, no appointment letter of the petitioner was found. Now, the question which arises for consideration is whether in the absence of any appointment letter and the settlement of the terms and conditions of service, it could be inferred that the petitioner had been appointed by Indo-German Changer Project, Palampur only for a limited period or to work till the closure of the project, as has been claimed by the respondent in their reply.

32. In the case on hand, there is no grain of evidence led on record by the respondent to show that the petitioner had been appointed by the Indo-German Changer Project, Palampur and that he was a temporary employee. Be it recorded here at the risk of repetition that respondent No. 2 while under cross-examination was categorical that as per the record of the project submitted by the society, no appointment letter of the petitioner was found. There is also no cogent and reliable evidence, except for the self serving testimony of this respondent that the petitioner had only been appointed to work in the project. No such document, on the closure of

the project, has been produced and exhibited on record by the respondents to show that the petitioner had specifically been appointed for the project. There is not an *iota* of evidence on record that the petitioner had been put to notice at any stage in writing that his employment was in the project. There is also no evidence on the part of the respondents to show that the petitioner had ever been apprised or made aware of the fact that his employment would come to an end with the closure of the project. In the absence of any such evidence on record and taking into account the evidence of the petitioner it can safely be inferred that the petitioner had been appointed by the forest department and he had been deputed to work in the Indo-German Changer Project, Palampur. As per the mandays chart, copy of which has been placed on record by the respondents as Ex. RW1/B, it reveals that the petitioner had been appointed in the year 1995 as a daily paid worker and had continued to work as such till the year 1999. In this document there is a note that the petitioner had left the work. It was vociferously argued for the respondents that this document reveals that the petitioner himself had abandoned the job after the year 1999, so no provision of the Act can be said to have been violated. This cannot be accepted. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Then, no muster-roll has been proved on record by the respondents to show that the petitioner had been marked absent after the year 1999. It is, therefore, difficult to accept the respondents claim of abandonment, particularly when evidence has been led on record by the petitioner to show that his services had been terminated by the respondents on 31-12-2005.

33. The petitioner in his substantive evidence claimed that he had worked on daily wage basis on muster-roll with effect from the year 1994 without any appointment order or settlement of any terms and conditions of his service and that he had been deputed by the respondent *vide* a verbal order to work with IGCP, Palampur, which was under the control of the Forest Department of the State Government. When his cross-examination is seen, nothing has been extracted by the respondents so as to dislodge him on this count. Then, as discussed above the respondents' witness Shri B. S. Yadav, Divisional Forest Officer, Forest Division, Palampur maintained in his cross-examination as RW1 that the changer project came to an end in the year 2006. He also testified that the record in respect of the project, was handed over to Divisional Forest Officer, Forest Division, Palampur. It was also clear from the cross-examination of this witness that no appointment order of the petitioner existed in that record, which only goes to show that Indo-German Changer Project, Palampur, had never appointed the petitioner or that he was engaged only to work in the said project, as claimed by the respondents. So, from the testimony of the petitioner coupled with the other ocular and documentary evidence on record, it can safely be inferred that there existed a relationship of workman and employer between the parties.

34. It was contended by the Learned Deputy District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with effect from the year 1994 upto 31.12.2005 and had been completing more than 240 days in each calendar year.

35. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with

reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. Although, in his chief-examination, he claimed that he had rendered continuous service *w.e.f.* January, 1994 upto 31.12.2005, but as per the seniority list of daily paid workers, Ex. RW1/B, wherein the name of the petitioner figures at serial No. 13, he had only worked upto the year 1999. As per the reference the services of the petitioner were terminated on 31.3.2006. According to the aforesaid document, which is not disputed by the petitioner, the petitioner is shown to have not worked for a single day after the year 1999. Thus, he had not worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as 31.3.2006. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

37. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 13 of the statement of claim. Shri Nek Ram (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondent after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The only seniority list, Ex. RW1/B, though shows that a number of persons were junior to the petitioner, but they all are shown to have worked upto the year 2003 or before. So, there is nothing on record to establish that the principle of 'last come first go' had not been adhered to by the respondent. Then, no prayer had ever been made by the petitioner for the production of seniority list from the respondent during the pendency of this case.

38. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

39. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

39. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

40. Not pressed.

Issue No. 5 :

41. Not pressed.

Relief :

42. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 294/2015
Date of Institution	: 13-7-2015
Date of Decision	: 22-4-2019

Shri Khem Singh s/o Shri Adam Ram alias Atma Ram, r/o Village Thacha Dhar (Bar), P.O. Gara Gusaini, Sub-Tehsil Bali Chowki, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. S.S. Sippy, AR
For the Respondent(s)	: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Khem Singh s/o Shri Adam Ram alias Atma Ram, r/o Village Thacha Dhar (Bar), P.O. Gara Gusaini, Sub- Tehsil Bali Chowki, District Mandi, H.P. before the Executive Engineer, I.&P.H. Division, Mandi,

District Mandi, H.P. *vide* demand notice dated 15.07.2009 regarding his alleged illegal termination of service *w.e.f.* 01.02.1999 suffers from delay and laches? If not, Whether termination of the services of Shri Khem Singh s/o Shri Adam Ram alias Atma Ram, r/o Village Thacha Dhar (Bar), P.O. Gara Gusaini, Sub-Tehsil Bali Chowki, District Mandi, H.P. by the Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. *w.e.f.* 01.02.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent on 1st September, 1991 at I&PH Sub-Division Bali Chowki and thereafter he worked continuously without any break till 1st July, 1998. He then was made a chowkidar and had worked as such till 31st of January, 1999. His services were orally dispensed with by the respondent, without any reason, on 1st of February, 1999. He had approached the respondent time and again for his re-engagement, but without success. Fictional breaks were intentionally given to him by the respondent, so that he could not complete 240 days in any year. About 81 juniors were retained by the respondent, whose names have been given in para 4 of the statement of claim. No opportunity of re-engagement was ever given to the petitioner. The action of the respondent is stated to be in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches, have been taken.

On merits, it was admitted that the petitioner was engaged as a daily waged beldar *w.e.f.* 1.9.1991. It was averred that the petitioner had worked intermittently with the respondent and had left the work of his own sweet will. From the year 1993 upto the year 1996, the petitioner had not worked. It was specifically denied that the services of the petitioner were dispensed with on 1.2.1999. The petitioner had never represented for his re-engagement, except for raising the industrial dispute before the Conciliation Officer, by filing a demand notice dated 7.8.2009, after a lapse of about 10 years. The petitioner had not completed 240 days in any calendar year, so there was no need to serve any notice upon him under Section 25-F of the Act. No junior had been retained, nor engaged by the respondent in place of the petitioner. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 5.1.2016:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 15.07.2009 *qua* his termination of service *w.e.f.* 01.02.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
- (2) Whether termination of the services of petitioner by the respondent *w.e.f.* 01.02.1999 is/was illegal and unjustified as alleged? . . .*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

(4) Whether the claim petition is not maintainable in the present form as alleged?

. .OPR.

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Khem Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart as Ex. PW1/B, copy of judgment dated 5.5.2015 as Ex. PW1/C, copy of seniority list as EX. PW1/D and copy of judgment dated 18.10.2004 as Ex. PW1/E. The respondent examined one Shri Arun Sharma as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B and copy of seniority list as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Khem Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was engaged as a daily wager in the year 1991. He denied that he had not worked with the respondent from the year 1993 upto the year 1996. He also denied that his services were not dispensed with by the respondent in February, 1999. He specifically denied that he was an intermittent worker. It was also denied by him that no breaks were given to him by the department. He further denied that he himself had abandoned the work. He also denied that he had never worked for 240 days or more. He clearly denied that no junior had been kept at work by the department. It was also denied by him that he had given the demand notice in the year 2009. He admitted that he had never made any representation for being kept at work from February, 1999 upto the year 2009. He owns about 1 bigha of land, which he cultivates.

11. Ex. PW1/B is the copy of mandays chart relating to the petitioner.

12. Ex. PW1/C is the copy of judgment dated 5th May, 2015 passed in CWP No.1791/2013 by the Hon'ble High Court of H.P.

13. Ex. PW1/D is the copy of the list of daily waged beldars, who are stated to be juniors to the petitioner in the claim petition.

14. Ex. PW1/E is the copy of judgment dated 18.10.2014 passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 2261/2014.

15. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that as per the mandays chart Ex. RW1/B, the petitioner had worked with the department. Volunteered that, he had worked intermittently. He was categorical that in between the petitioner had remained absent. Self stated that, he had never worked in between the year 1993 upto the year 1996. He clearly admitted that no notice had been given to the petitioner for his not attending the work. Volunteered that, there is no provision for issuing a notice to a daily wager. He admitted that as per seniority list Ex. PW1/D, 81 workers being junior to the petitioner have been regularized.

16. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

17. Ex. RW1/C is the copy of the seniority list with respect to daily waged workers of I&PH Division Mandi, upto 31.12.2004.

18. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. PW1/B produced by the petitioner is not in dispute. A similar mandays chart, Ex. RW1/B has been produced on record by the respondent. The perusal of these mandays charts disclose that the services of the petitioner were initially engaged on 1st September, 1991.

19. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Arun Sharma (RW1) clearly admitted that no notice had been issued to the petitioner for his remaining absent from work. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. PW1/B (also Ex. RW1/B), the petitioner had only worked for a total of 224 days from September, 1991 upto 31st January, 1999. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. Ex. RW1/C i.e. the seniority list of daily waged workers relating to Shri Amer Singh and others, reveals that Shri Amer Singh was appointed by the respondent on 1.9.1992, whereas the services of Shri Naresh Kumar were engaged on 1.3.1993. A further perusal of this

document would reveal that the other persons mentioned in this seniority list were also engaged by the respondent after the engagement of the services of the petitioner. At the cost of repetition, I will like to add that the date of initial appointment of the petitioner as per Ex. PW1/B (also Ex. RW1/B) is 01.9.1991. Admittedly, Shri Amer Singh and others were still serving the respondent/department after the services of the petitioner having been dispensed with, and their services, as discussed, were engaged after the engagement of the services of the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department, after his disengagement on 1st February, 1999. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice.

22. Not only this, Shri Arun Sharma (RW1) in his cross-examination admitted that as per the seniority list Ex. PW1/D 81 juniors to the petitioner have been regularized.

23. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns 01 bigha of land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. The learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

27. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

28. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble

Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster-roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about five years and actually worked for 224 days as per mandays charts on record and that his services were disengaged on 1st February, 1999, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than **ten years i.e.** demand notice was given on 15.7.2009. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but there is no cogent, convincing, strong and reliable evidence on record in this regard. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 46 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump-sum compensation.

29. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered and decided accordingly.

Issue No. 4 :

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the Learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief :

31. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹ 25,000/- (Rupees

twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 550/2015
Date of Institution : 04-12-2015
Date of Decision : 22-04-2019

Smt. Koushalya Devi (Legal Heir) Widow of deceased Late Shri Ramesh Chand, r/o Village Jodhan, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Koushalya Devi (Legal Heir) Widow of deceased Late Shri Ramesh Chand, r/o Village Jodhan, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. *vide* demand notice dated 23-08-2010 regarding alleged illegal termination of services her late husband *w.e.f.* 07-07-2005 suffers from delay and laches? If not, Whether termination of services of Late Shri Ramesh Chand s/o Shri Sant Ram, r/o Village Jodhan, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division

Dharampur, District Mandi, H.P. *w.e.f.* 07-07-2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that her husband, named Shri Ramesh Chand (deceased) was appointed by the respondent as a daily waged beldar on muster-roll basis in the year 1999 and who continuously worked upto 7.7.2005. He had completed 240 days in each calendar year. His services had been dispensed with by the respondent *w.e.f.* 8.7.2005, *vide* order dated 4.7.2005 and the petitioner had been paid the retrenchment compensation. The respondent at the time of terminating the services of the husband of the petitioner had not adhered to the principle of 'last come first go', as juniors to him had been retained, as detailed in para 4 of the petition. Even new/fresh hands, namely, S/Shri Pardeep Kumar, Lekh Raj and Smt. Satya Devi were appointed by the department after the termination of the services of the husband of the petitioner, but her husband was not afforded an opportunity of re-employment. The retrenchment order dated 8.7.2005 with regard to the retrenchment of 43 workers stood set aside by this Court on 30.3.2009, whereby the respondent was directed to reinstate their services with all consequential benefits. The aforesaid award was assailed before the Hon'ble High Court and it was only modified to the extent of payment of Rs. 50,000/- instead of 50% back wages. S/Shri Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkiat Khan have been reinstated by the department, who all are junior to the husband of the petitioner. They at present are working with the respondent in different Sub-Divisions, on regular basis. An industrial dispute by issuing a demand notice dated 23.8.2010 was raised by the petitioner. Conciliation was tried by the Conciliation-cum-Labour Officer Mandi, but without success. Failure report was then sent to the Labour Commissioner, Shimla, who had refused to refer the matter to the Court. Thereafter, the petitioner had moved the Hon'ble High Court, when the Labour Commissioner was directed to refer the dispute to the Court. Accordingly, thereafter the appropriate Government had made the reference to the Court. The act of the respondent in dispensing with the services of Shri Ramesh Chand (deceased), the husband of the petitioner *w.e.f.* 7.7.2005 was highly unjustified, arbitrary and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner, thus, prays for her appointment on compassionate grounds with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches, have been taken.

On merits, it was admitted that husband of the petitioner was engaged in December, 1999 and had worked with the department upto 7.7.2005. He was retrenched *w.e.f.* 8.7.2005 after adopting all the codal formalities. The husband of the petitioner was heard and was given three months basic pay in lieu of the notice and retrenchment compensation, as provided under the rule. The notice was accepted by the husband of the petitioner, without any protest. It was specifically denied that the husband of the petitioner had illegally been retrenched. Some junior daily waged workers had been transferred to Dharampur Division from other Divisions, but their seniority list were not received, so they were retained. The persons named in the petition had continuously worked and completed 240 days in each calendar year. Some workers had been engaged on compassionate grounds, on the approval of the Government, as their parents had died in harness. It was admitted that as per the orders of the Court 43 workmen stood re-engaged. No case was filed by the petitioner before the Court. So, the question of giving any opportunity to the husband of the petitioner at the time of re-engagement of 43 workers did not arise. After about five years from retrenchment, a demand notice was raised by the petitioner, without there being any explanation for the delay. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 27.3.2017:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-08-2010 *qua* her termination of service *w.e.f.* 07-07-2005 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
- (2) Whether termination of the services of petitioner by the respondent *w.e.f.* 07-07-2005 is/was illegal and unjustified as alleged? . . .*OPP.*
- (3) If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. On 20.8.2018, the issues No. 1 and issue No. 2 were recast/reframed alongwith other issues framed on 27.3.2017, as follows:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-08-2010 *qua* termination of service of her late husband *w.e.f.* 07-07-2005 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
- (2) Whether termination of the service of deceased late Ramesh Chand by the respondent *w.e.f.* 07-07-2005 is/was legal and justified as alleged? . . .*OPP.*

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Koushalya Devi (Legal Heir) appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of mandays chart of Shri Shashi Kant as Ex. PW1/B, copy of RTI information dated 13.11.2013 as Ex. PW1/C, copy of death certificate of Ramesh Chand as Ex. PW1/D and copy of legal heir certificate as Ex. PW1/E. The respondent examined one Shri Parmod Kashyap (RW1), who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

8. Arguments of the learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Decided accordingly
<i>Issue No. 2</i>	: Decided accordingly
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Not pressed
<i>Relief.</i>	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issues No.2 to 3 :

10. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Smt. Koushalya Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her husband Shri Ramesh Chand was engaged on work in December, 1999. She denied that he had worked intermittently. She admitted that a notice was given and retrenchment compensation paid to her husband by the department in July, 2005. She denied that no junior to her husband had been kept by the department at work. She admitted that demand was raised in August, 2010. She denied that only those workers had been regularized, who had worked regularly with the department and had fulfilled the conditions of the Government policy. She admitted that she is doing days' drudgery privately. She further admitted that she owns land, which she cultivates. She denied that her husband was not entitled for regularization. She further denied that after his death, she was not entitled for the job as per the Government policy. She denied that no junior to her husband had been regularized.

12. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

13. Ex. PW1/C is the copy of letter dated 13.11.2013 regarding information under RTI Act, 2005.

14. Ex. PW1/D is the copy of death certificate of Shri Ramesh Chand.

15. Ex. PW1/E is the copy of legal heirs certificate relating to the petitioner and Ms. Shalu, Ms. Raksha, Master Bhavishya Kant and Smt. Janki Devi.

16. Conversely, Shri Parmod Kashyap, Executive Engineer, HPPWD, Division, Dharampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no appointment letter was issued to the husband of the petitioner, when he was kept at work. He also admitted that the husband of the petitioner had worked since December, 1999 upto the year 2005. He denied that the husband of the petitioner was removed from service after the year 2005. He admitted that as per the record, no compensation had been paid to her husband. He admitted that the persons mentioned in para No. 4 of the claim petition were junior to her husband and they were working regularly. He further admitted that demand notice was responded to *vide* reply Ex. PX. It was also admitted by him that Shri Gagan Singh as per the orders of the Hon'ble High Court has been re-engaged by the department.

17. Ex. RW1/B is the copy of mandays chart relating to the husband of the petitioner, namely, Shri Ramesh Chand.

18. It is the admitted case of the parties that the services of the husband of the petitioner, namely, Shri Ramesh Chand were engaged as a daily waged beldar. The mandays

chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the husband of the petitioner were initially engaged in the year 1999 by the respondent.

19. It is an admitted fact that the services of the husband of the petitioner were terminated by the respondent *w.e.f.* 8.7.2005, after issuing a notice. Smt. Koushalya Devi (PW1) in her substantive evidence categorically admitted that retrenchment compensation and notice had been given to her husband by the department in July, 2005.

20. Ex. PW1/B, *i.e.* the mandays chart of beldar, namely, Shri Shashi Kant, reveals that he was appointed by the respondent in January, 2002 and that he had worked as such upto November, 2008. At the cost of reiteration, I will like to add that the year of initial appointment of the husband of the petitioner, Shri Ramesh Chand, as per the pleadings and evidence of the parties on record is 1999. There is nothing on record to show that Shri Shashi Kant was senior to the husband of the petitioner. This indicates that a person junior to the husband of the petitioner was still serving the respondent/department, after his services had been dispensed with. The latter has failed to adhere to the principle of 'last come first go'. Retaining a junior at the cost of the senior is nothing but unfair labour practice.

21. Not only this, Shri Parmod Kashyap (RW1) in his cross-examination clearly admitted that the workers named in para 4 of the claim petition by the petitioner, were junior to her husband and they are regularly working with the department. The names of these workmen, as per para 4 of the petition are S/Shri Prabhu Ram, Shashi Pal, Inder Singh and Ajay Kumar and S/Smt. Roshani Devi and Mamta Devi.

22. It was also claimed by the petitioner that after the alleged disengagement of her husband, new/fresh hands had been engaged by the respondent. Except for her self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

23. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the husband of the petitioner is illegal and unjustified.

24. Faced with the situation, it was contended by the Learned Deputy District Attorney for the respondent that as Shri Ramesh Chand, the workman is no more in the land of living, the petitioner being his wife disentitles her to the reliefs she has prayed for. This contention, to my thinking, appears to be ill-conceived. The question of maintainability of the petition by the legal heirs/legal representatives of the deceased workman was considered by the Hon'ble Andhra

Pradesh High Court in case titled as ***Smt. Amjilamma Vs. Labour Court II at Hyderabad, 1996 (1) LLJ 733 (AP)***, wherein it has been held that the legal heirs/legal representatives of the deceased workman can institute an industrial dispute before a Labour Court questioning the validity of termination of services of the deceased workman. Then, the Hon'ble Madhya Pradesh High Court in case titled as ***Shamim Bano Vs. Manager, 2018 (156)FLR 991***, has held that as the termination of the workman has been found to be illegal the petitioner who is the legal representative is entitled to seek reinstatement with continuity in service. As per the legal heir certificate produced by the petitioner, copy of which is Ex. PW1/E, the petitioner is shown to be one of the legal heirs of the deceased workman, Shri Ramesh Chand. The correctness of this document was not disputed by the respondent. Since, as per my findings above, the termination of the services of the husband of the petitioner has been held to be illegal and unjustified, the petitioner being his legal representative, in view of the case law cited above, is entitled to seek reinstatement and continuity in service. So, the aforesaid contention of the Learned Deputy District Attorney merits rejection and is rejected.

25. Hence, the both these issues are decided accordingly.

Issue No. 1 :

26. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

27. In view of the trite laid down in this ruling, it cannot be said that the petition is barred by limitation. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in ***Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view)***, will also be advantageous on this aspect of the matter.

28. While testifying in the Court as PW1, the petitioner has given her age as 37 years. However, seeing the peculiar factual narration discussed hereinabove and also the fact that the petitioner has been doing the days' drudgery privately and she is also cultivating the land in her possession, she is not entitled to any back wages for the said interregnum.

29. This issue is also decided accordingly.

Issue No. 4 :

30. Not pressed.

Relief :

31. For all the aforesaid reasons discussed above, the reference is partly decided in favour of the petitioner. Consequently, the respondent is directed to re-engage the petitioner forthwith in place of her deceased husband, Shri Ramesh Chand. The petitioner shall be entitled to

seniority and continuity from the date of demand notice *i.e.* 23.8.2010, *except back wages*. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 581/2016
Date of Institution : 24-8-2016
Date of Decision : 23-4-2019

Shri Jai Chand s/o Shri Tikhu Ram, r/o Village Sanihan, P.O. Dhwal, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Jai Chand s/o Shri Tikhu Ram, r/o Village Sanihan, P.O. Dhwal, Tehsil Sunder Nagar, District Mandi, H.P. during July, 1998 by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District Mandi, H.P., who had worked on daily wages only for 75 days in year, 1998 and has raised his industrial dispute after about 12 years *vide* demand notice dated 17.08.2010, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period of 75 days only in year, 1998 and delay of about 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1997 and

thereafter he worked continuously without any break till the year 1998. His services were orally dispensed with by the respondent in the end of the year 1998. He had approached the respondent time and again for his re-engagement, but without success. Fictional breaks were intentionally given to him by the respondent, so that he could not complete 240 days in any year. A number of juniors, as detailed in para 5 of the petition, were retained by the respondent. Even new/fresh hands were engaged by the respondent after the retrenchment of the petitioner. No opportunity of re-engagement was ever given to the petitioner. The action of the respondent is stated to be in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches, have been taken.

On merits, it was asserted that the petitioner had only worked intermittently for 75 days in the year 1998 and that he had left the job of his own sweet will, without intimating the department. He had never continuously worked for 240 days in any calendar year and had left the job in August, 1998. He thereafter had never approached the respondent/department. The services of the petitioner had never been terminated by the respondent. No representations were ever made by the petitioner to the respondent. No fictional breaks were given to the petitioner. His demand for re-engagement at a belated stage cannot be accepted. Only those workers were regularized by the respondent, who had continuously worked and had fulfilled the criteria of the Government policy for regularization. Some workers were engaged on compassionate grounds and also as per the orders of the Court. The respondent had not violated any of the provisions of the Act. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 21.6.2018:

- (1) Whether termination of services of the petitioner by respondents during July, 1998 is/was legal and justified as alleged? . . .*OPP.*
- (2) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Jai Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of seniority list of workers as Ex. PW1/B. The respondent examined one Shri D.R. Chauhan as RW1, who tendered his statement

by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B and copy of seniority list as Ex. RW1/C.

7. Arguments of the Learned Authorized Representative for the petitioner and Dy. District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: Not pressed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹15,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Jai Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had only worked for 75 days from May, 1998 upto July, 1998. Volunteered that, he had worked regularly from the year 1997 upto the year 1998. He denied that he had never worked continuously during these years. He also denied that no junior to him had been kept at work by the department. He admitted that he had raised a demand notice in the year 2010. He specifically denied that from August, 1998 upto the year 2010, no representation was ever made by him. Self stated that he had corresponded with the department for being re-engaged in the years 1999, 2000, 2002, 2003 to 2005, 2007 and 2009. He had to admit that no record of such correspondence has been annexed with the file, nor he can produce it. He clearly admitted that he owns land, which he cultivates. He also admitted that he had not given a detail of the persons whose names had been mentioned in para 5 of the petition and para 4 of his affidavit. He denied that he had neither been removed from work, nor given fictional breaks by the department.

11. Ex. PW1/B is the copy of seniority list of workers of HPPWD Division Sunder Nagar, District Mandi relating to Shri Sunder Ram & others.

12. Conversely, Shri D.R. Chauhan, Executive Engineer, HPPWD Division, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that the seniority list Ex. PW1/C had been issued by their office. He feigned ignorance that a detail of the juniors, who have been kept at work, is there in this list. Volunteered that, there is no date of initial engagement mentioned in it. He specifically denied that before keeping juniors at work, after the year 1998, no notice was

issued to the petitioner for being re-engaged. He admitted that no retrenchment compensation had been paid. He clearly denied that fictional breaks had intentionally been given to the petitioner so that he could not work for 240 days or more. He categorically admitted that as per the record no notice under Section 25-F of the Act had been given to the petitioner. They had never removed the petitioner from work. Self stated that, he himself had left the job. They had never charge-sheeted the petitioner. He admitted that there was no correspondence with the petitioner for his returning back to work.

13. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of combined seniority list relating to Shri Sher Singh and others.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1997 and that he had worked as such upto the year 1998. The respondent took the stand that the petitioner had only worked as a daily waged beldar for 75 days in the year 1998. Although, the petitioner (PW1) in his cross-examination denied the fact that he had only worked for 75 days from the month of May, 1998 upto July, 1998, but placed on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. It reveals that the services of the petitioner had been engaged by the respondent in the month of May, 1998 as a daily waged beldar and he had only worked as such upto July, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1997, as claimed by him.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri D.R. Chauhan (RW1) clearly admitted that the petitioner had never been charge-sheeted. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. From the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his year of retrenchment *i.e.* 1998. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

18. Ex. RW1/C is the combined seniority list of daily waged beldars. It is admitted by Shri D.R. Chauhan (RW1) that this seniority list has been issued by their office. Manifest that it is an admitted document on the part of the respondent. From this document, it is clear that the services of the persons whose names figure from serial No. 37 to 105, were re-engaged/engaged in the years 1999, 2000, 2001, 2002, 2003, 2006, 2008 and 2009, either on Court orders or on compassionate grounds. The dates of initial engagement of those persons who were re-engaged as per Court orders have not come on the file. The dates of deaths of the husbands or parents of those persons, who were appointed on compassionate grounds, have also not come on record. It is nowhere the case of the respondent that such persons are not serving the respondent/

department. Admittedly, their services were engaged after the engagement of the services of the petitioner. The years of engagement of such persons are shown to be from the year 1999 onwards upto the year 2009. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1998. There is nothing on record to show that the persons who were re-engaged as per Court orders and that the deceased parents and husbands of those persons who were appointed on compassionate grounds, were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. It is an admitted case of the respondent (RW1) that no opportunity of re-employment was given to the petitioner. Thus, the respondent has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

20. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

21. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. He also clearly admitted that he is also doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. The Learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as *Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the

ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

23. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon’ble High Court in case titled as ***Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

24. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon’ble Supreme Court that where the workman had worked as a daily wager or muster-roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791***, the Hon’ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three months and actually worked for 75 days as per mandays chart on record and that his services were disengaged in the end of the year 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than ***twelve years*** i.e. demand notice was given on 17.8.2010. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. In his substantive evidence, the petitioner (PW1) was categorical that neither he had annexed such record, nor he could produce the same. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 37 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon’ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump-sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹15,000/- (Rupees fifteen thousand only) would be an appropriate relief to

which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondent and in favour of the petitioner.

Issue No. 3 :

26. Not pressed.

Relief :

27. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 95/2013
Date of Institution : 05-8-2013
Date of Decision : 29-04-2019

Shri Pritam Chand s/o Shri Hari Ram, c/o Shri R. K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab, through Legal Heirs.

1. Smt. Nirmla Devi w/o late Shri Pritam Chand
2. Shri Vinod Kumar s/o late Shri Pritam Chand
3. Ravinder Kumar s/o late Shri Pritam Chand . . .Petitioners.

Versus

1. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd. V.P.O Karluhi, Tehsil Amb, District Una, H.P. (present office).

2. The Employer/Managing Director, Crest Steel & Power Pvt. Ltd., # 308, Cee Jay House, Dr. Annie Besant Road, Worli Mumbai-400018 (Corporate office) . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioners : Sh. R.K. Singh Parmar, A
 For the Respondent No. 1 : already *ex parte*
 For the Respondent No. 2 : Sh. N.L. Kaundal, AR

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Pritam Chand s/o Shri Hari Ram, c/o Shri R.K. Singh Parmar, Working President Pb. INTUC, #211-L Brari, P.O. Partap Nagar, Nangal Dam, District Ropar, Punjab *w.e.f.* 27- 7-2011 by and the employer/Managing Director, Crest Steel & Power Pvt. Ltd., VPO Karluhi, Tehsil Amb, District Una, H.P. (Present Office), The Employer/Managing Director, Crest Steel & Power Pvt. Ltd., #308, Cee Jay House, Dr. Annie Besant Road, Worli Mumbai-400018 (Corporate Office) on closure of the establishment, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case is listed for arguments for today but, however, Shri R.K. Singh Parmar, Authorized Representative for the legal heirs of deceased petitioner Shri Pritam Chand has made the below given statement in the Court today:—

“Stated that I do not want to proceed with the reference (bearing Ref. No. 95/2013) titled as Pritam Chand *V/s* M.D. Crest Steel and Power Pvt. Ltd. & Ors. and withdraw the same on behalf of the petitioner”.

3. In view of the above statement made by the Learned Authorized Representative for the legal heirs of the deceased petitioner, the deceased petitioner or his legal heirs are not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 29th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 167/2017
Date of Institution : 08-8-2017
Date of Decision : 29-04-2019

Smt. Ramta Devi w/o Shri Chander Mani, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Ramta Devi w/o Shri Chander Mani, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. from time to time during August, 1999 to August, 2012 and finally terminated during September, 2012 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on muster-roll basis in the year 1998. She worked under the supervision of Forest Range Officer, Kamlah upto the year 2012. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in September, 2012. Fictional breaks were given by the respondent upto the year 2012. It is also asserted that while terminating the services of the petitioner in the year 2012, the respondent had not followed the principle of ‘last come first go’ whereas the persons junior to her, namely, S/Sh./Smt. Love Kumar, Sheela Devi, Chaman Lal, Nirmla Devi, Bimla Devi, Kanta Devi, Purmila Devi, Raj Kumar, Raj Kumari, Surinder Kumar, Bidhi Chand, Shyam Singh, Rani Devi, Prem Singh and Kashmir Singh were retained in service without any breaks and all these workers are still working with the respondent/department. No muster-roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26.8.2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was claimed that the petitioner had been engaged in the year 1999 and had worked upto the year 2012. At the time of termination of services of the

petitioner, she had completed more than 240 days. Fictional breaks from time to time *w.e.f.* the year 1996 upto the year 2012 had been given by the respondent. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been owned that the services of the petitioner were engaged in the month of June, 1999 on seasonal forestry works as per availability of works and funds. It was denied that the petitioner was engaged in the year 1998. The petitioner had worked for 29 days, 29 days & 8 days during the months of June, July and August, 1999 respectively. Thereafter, she had worked for 6 days, 16 days and 9 days during 2/2001, 3/2001 and 8/2001 respectively. Similarly, the petitioner had worked for 17 days in July, 2008 and for 11 days in January, 2009 and had never completed 240 days in any of the calendar years. Since July, 2010, the petitioner had hired work from the respondent/department on bill basis and had received the payments for the execution of various works. The claimant/petitioner was an intermittent worker. She used to work as per her convenience. Despite the availability of the seasonal work, she used to be absent from her duties. The work is provided to the seasonal/casual workers as per its availability and the funds. The services of the casual labourers are utilized by following the principle of 'last come first go'. It was further asserted that no fictional breaks had been given to the petitioner. The petitioner had not completed more than 240 days in any of the calendar years. It is asserted that no fictional breaks had been given to her and the respondent had not violated the provisions of Section 25-F of the Act, as such there was no need to serve a notice upon the petitioner. The respondent had followed the principle of 'last come first go' strictly and no fresh hands have been engaged by him. It was further asserted that the services of Shri Love Kumar had been regularized as Forest Worker as per the order of the Labour Court and the services of Smt. Nirmla Devi were engaged on compassionate grounds in view of the order of the Hon'ble State Administrative Tribunal. Smt. Sheela Devi was engaged as a part-time *w.e.f.* July, 1998 and thereafter her services had been converted into whole time on 26.11.2009 and she is still working as a daily wager with the respondent/department. Shri Chaman Lal was engaged as casual labourer for seasonal forestry works on 1.4.1998, as such he is senior to the petitioner. S/Smt. Bimla Devi and Kanta Devi had initially been engaged as casual labourers in the year 2000 and they both had abandoned the work. S/Smt. Promila Devi and Raj Kumari and Shri Bidhi Chand had never been engaged as casual labourers in the Division, as per the record. Shri Raj Kumar who was engaged as a casual labourer on 1.4.2011 had also left the work of his own and had not reported back on work since February, 2012. Shri Shyam Singh was engaged as a contingent paid worker on compassionate ground, under died in harness policy of the State, after the death of his father. Smt. Rani Devi had been engaged as a casual beldar on 1.2.2010 and she had left the work of her own. Similarly Shri Prem Singh who was engaged as a casual beldar on 1.3.2011 had also left the work of his own. Shri Kashmir Singh was engaged as a casual labourer in July, 2013 for seasonal forestry works, subject to the availability of works and funds. It was asserted that the petitioner was engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28.4.2009. The petitioner was an intermittent worker and had been reporting for duty as per her own convenience and sweet will. It is also asserted that no junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist.

In these circumstances, the respondent prayed that the petition in had be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10.8.2018:

- (1) Whether time to time termination of service of the petitioner by the respondent during August, 1999 to August, 2012 is/was legal and justified as alleged? . . .*OPP*.
- (2) Whether final termination of services of petitioner by the respondent during September, 2012 is/was legal and justified as alleged? . . .*OPP*.
- (3) If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
- (4) Whether the present claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Ramta Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list dated 31.12.2012 as Ex. PW1/B, copy of seniority list dated 30.11.2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of Award dated 13.1.2005 as Ex. RW1/C, copy of letter dated 19.12.2009 as Ex. RW1/D, copy of order dated 9.7.2003 as Ex. RW1/E and copy of letter dated 27.9.2008 as Ex. RW1/F.

7. Arguments of the Learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Decided accordingly
<i>Issue No. 2</i>	: Decided accordingly
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Not pressed
<i>Relief</i>	: Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Ramta Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of June, 1999. Volunteered that, she was engaged in the year 1998. She denied that she was not engaged in the year 1998. She denied that there is only seasonal work in the department. Self stated that the work is done throughout the year. She categorically denied that she had not worked continuously and had only worked for 66 days in the year 1999, 31 days in the year 2001, 17 days in the year 2008 and 11 days in the year 2009. She denied that in July, 2010 and July and August, 2012, she had worked on bill basis. She specifically denied that she had left the work of her own after August, 2012. She admitted that the details of the work done by her with the department is correct as per the mandays. She denied that no fictional breaks were ever given to her and that she had never worked with the department for 240 days in any year. She owns land, which she cultivates. She denied that the department had not removed her from work. She also denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per orders of the Court. She feigned ignorance that Shri Love Kumar and Shri Chaman Lal are senior to her. She feigned ignorance that S/Shri/Smt. Bimla Devi, Kanta Devi, Raj Kumar, Rani Devi, Prem Singh and Kashmir Singh were not working with the respondent now. She denied that S/Shri/Smt. Urmila Devi, Raj Kumari, Surinder Kumar and Vidhi Chand had never worked with the respondent. She admitted that Smt. Nirmla Devi and Shri Shaym Singh were appointed on compassionate grounds. She feigned ignorance that Smt. Sheela Devi was kept on work as part-time in the month of July, 1998.

11. Ex. PW1/B is the copy of Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012.

12. Ex. PW1/C is the Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016.

13. Ex. PW1/D is the copy seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of seasonal industry of the Forest Department. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice has been issued for temporary work by the department. At present, there are 27 forest workers posted in Joginder Nagar Forest Division. He admitted that they all are regular. He admitted that as per Ex. RW1/E and Ex. RW1/F respectively, Smt. Nirmla Devi and Shri Shyam Singh were appointed as daily wagers. He was categorical that Shri Shyam Singh was junior to the petitioner. Volunteered that, he was engaged on compassionate grounds as a daily wager and is still working with the department. He also admitted that as per Ex. PW1/D, Smt. Nirmla Devi has been working continuously since the year 2000 and has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of Award dated 13.1.2005 passed in Reference No.278/2001 (RBT No.311/04) by this Tribunal.

17. Ex. RW1/D is the copy of letter dated 14.5.1995 regarding application of Smt. Nirmla Devi w/o late Sh. Roop Lal, Daily Wager from Principal CCF, H.P.

18. Ex. RW1/E is the copy of order dated 9.7.2003 passed in O.A. (M) No.20/2000 by the Hon'ble Administrative Tribunal, Shimla.

19. Ex. RW1/F is the copy of letter dated 27.9.2008 regarding appointment of sons, daughters/real relatives of government servant died in harness-providing employment thereof.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster-roll basis. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of June, 1999 by the respondent. Although, the petitioner has claimed that her services were engaged in the year 1998, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct.

21. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is June, 1999. Placed on record by the petitioner is the Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31.12.2012. It reflects the name of the petitioner at serial No. 80 and that her services were engaged as a daily wager on 8.12.2004. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of the budget. However, the respondent has not place on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. As per the seniority list of daily wagers of Joginder Nagar Forest Division, Ex. PW1/D, nine daily wagers shown therein have completed 240 days or more in a year. Persons working for 240 days or more in a year cannot be termed as seasonal workers. Even otherwise, it is nowhere the plea taken by the respondent nor there is any *iota* of evidence on record to show that the forest department had been declared as a seasonal factory, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the Government specifying the forest department as a seasonal industry.

22. The version of the petitioner is that she had worked with the respondent/department upto August, 2012. In the month of September, 2012 her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the month of August, 2012 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 1999. The putting of this suggestion by the petitioner and its admission by the respondent leaves no doubt in mind that the petitioner admits that she is still serving in the department. Then, the Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31.12.2012, Ex. PW1/B reflected the name of the petitioner at serial No. 80. A Divisional level revised seniority list of casual labourers/daily wagers of Joginder Nagar Forest Division, as it stood on 30.11.2016 has also been placed on record by the petitioner as Ex. PW1/C. The name of the petitioner figures at serial No. 30 of the list. As per this document the services of the petitioner were engaged as a daily wager on 1.5.1999. These are admitted documents on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of September, 2012, her name ought not to have been reflected in the above said lists. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in September, 2012 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after September, 2012 had worked with the respondent, finds support from the seniority lists, Ex. PW1/B and Ex. PW1/C, as they reflected the seniority of the daily waged labourers, as it stood on 31.12.2012 and 30.11.2016 respectively. In view of these facts, it can easily be said that the petitioner is not speaking the

truth. Her services were never finally terminated by the respondent in the month of September, 2012, as alleged. As no retrenchment order was passed by the respondent in the month of September, 2012, it cannot be said that the termination/retrenchment order is illegal and unjustified.

23. So far as providing the fictional breaks to the petitioner by the respondent from time to time from August, 1999 to August, 2012 is concerned, I would like to say that the said assertion of the petitioner appears to be true. As per the mandays chart, Ex. RW1/B, the work for the entire month was never being provided to the petitioner by the respondent. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had herself abandoned the work of her own free will and volition. If the petitioner used to remain absent from her duties, then why the respondent did not issue any show cause notice to her or initiate disciplinary proceedings against her? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per her sweet will and convenience is incorrect. A plea was also taken to the effect that since July, 2010, the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B for the month of July, 2010 and for the months of July and August, 2012, the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster-roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of September, 2012, is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

24. While testifying in the Court as PW1, the petitioner has given her age as 42 years. It is well known that a young woman like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she owns land, which she cultivates. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

25. These issues are decided accordingly.

Issue No. 4 :

26. Not pressed.

Relief :

27. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of her services in the month of September, 2012 being meritless and not

maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from August, 1999 till August, 2012 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 168/2017
Date of Institution : 08-8-2017
Date of Decision : 30-04-2019

Smt. Sumna Devi w/o Shri Bir Singh, r/o Village Patrain, P.O. Gangoti, Tehsil Ladbharol, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Sumna Devi w/o Shri Bir Singh, r/o Village Patrain, P.O. Gangoti, Tehsil Ladbharol, District Mandi, H.P. from time to time during July, 2004 to March, 2013 and finally terminated during March, 2013 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on muster-roll basis in the year 1996. She worked under the supervision of Forest Range Officer, Lad Bharol upto the year 2013. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the month of March, 2013. Fictional breaks were given by the respondent upto the year 2013. It is also asserted that while terminating the services of the petitioner in the year 2013, the respondent had not followed the principle of 'last come first go' whereas persons junior to her, namely, S/Sh. Love Kumar and Shyam Singh and S/Smt. Nirmla Devi and Smt. Sheela Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster-roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26.8.2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was claimed that the petitioner had been engaged in the year 2004 and had worked upto the year 2013. At the time of termination of services of the petitioner, she had completed more than 240 days. Fictional breaks from time to time *w.e.f.* the year 1996 upto the year 2013 had been given by the respondent. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been owned that the services of the petitioner were engaged in the month of July, 2004 on seasonal forestry works as per availability of works and funds. It was denied that the petitioner was engaged in the year 1996. She had worked intermittently as per the availability of the work and funds on seasonal forest works on muster-rolls basis during the years 2004 and 2005 and that too for a very short period. She had abandoned the work *w.e.f.* the year 2006 upto the year 2010. Since the year, 2011 upto the year 2013, the petitioner had hired work from the respondent/department on bill basis and had received the payments for the execution of various works. No fictional breaks were given to the petitioner and she had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. The services of the petitioner had never been terminated by the respondent. The work is provided to the seasonal/casual workers as per its availability and the funds. The services of the casual labourers are utilized by following the principle of 'last come first go'. The respondent had followed the principle of 'last come first go' strictly and no fresh hands have been engaged by him. It was further asserted that the services of Shri Love Kumar had been regularized as Forest Worker as per the order of the Labour Court and the services of Smt. Nirmla Devi were engaged on compassionate grounds in view of the order of the Hon'ble State Administrative Tribunal whereas the services of Shri Shyam Singh was engaged as a contingent paid worker under died harness policy after death of his father. Smt. Sheela Devi was engaged as a part-time *w.e.f.* July, 1998 and thereafter her services had been converted into whole time on 26.11.2009 and she is still working as a daily wager with the respondent/department. All the above named workers, except for Shri Shyam Singh are senior to the petitioner. It was asserted that the petitioner was engaged on bill voucher basis as per directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28.4.2009. It was further asserted that no fictional

breaks had been given to the petitioner, however she was an intermittent worker and had been reporting for duty as per her own convenience and sweet will. It is also asserted that no junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist.

In these circumstances, the respondent prayed that the petition in had be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 2.7.2018:

- (1) Whether time to time termination of service of the petitioner during July, 2004 to March, 2013 by the respondent is legal and justified as alleged? . . .*OPP.*
- (2) Whether final termination of services of petitioner by the respondent during March, 2013 is legal and justified as alleged? . . .*OPP.*
- (3) If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (4) Whether the present claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
- (5) Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Sumna Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list dated 31.12.2012 as Ex. PW1/B, copy of seniority list dated 30.11.2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copies of bills as Ex. RW1/C1 to C3, copy of Award dated 13.1.2005 as Ex. RW1/D, copy of letter dated 14.5.1995 as Ex. RW1/E, copy of order dated 9.7.2003 as Ex. RW1/F and copy of letter dated 27.9.2008 as Ex. RW1/G.

7. Arguments of the Learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Decided accordingly
<i>Issue No. 2</i>	: Decided accordingly
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Not pressed
<i>Issue No. 5</i>	: No
<i>Relief</i>	: Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Sumna Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of July, 2004. Volunteered that, she was engaged in the year 1996. She denied that she was not engaged in the year 1996. She denied that there is only seasonal work in the department. Self stated that, the work is done throughout the year. She categorically denied that she had not worked continuously and had only worked for 11.5 days in the month of July, 2004 and for 10 days in the month of March, 2005. She denied that in August, 2011, July, 2012 and March, 2013, she had worked on bill basis. She specifically denied that she had left the work of her own after March, 2005. She admitted that the details of the work done by her with the department is correct as per the mandays. She denied that no fictional breaks were ever given to her. However, she admitted that she had never worked for 240 days in any of the years. She owns land, which she cultivates. She denied that the department had not removed her from work. She also denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per orders of the Court. She feigned ignorance that Shri Love Kumar is senior to her. She admitted that Smt. Nirmla Devi and Shri Shaym Singh were appointed on compassionate grounds. She feigned ignorance that Smt. Sheela Devi was kept at work as part-time in the month of July, 1998.

11. Ex. PW1/B is the copy of Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012.

12. Ex. PW1/C is the Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016.

13. Ex. PW1/D is the copy seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of seasonal industry of the Forest Department. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice has been issued for temporary work by the department. At present there are 27 forest workers posted in Joginder Nagar Forest Division. He admitted that they all are regular. He admitted that as per Ex. RW1/E and Ex. RW1/F respectively, Smt. Nirmla Devi and Shri Shyam Singh were appointed as daily wagers. He was categorical that Shri Shyam Singh was junior to the petitioner. Volunteered that,

he was engaged on compassionate grounds as a daily wager and is still working with the department. He admitted that the petitioner is working since the year 2004. He also demitted that as per Ex.PW1/D, Smt. Nirmla Devi has been working continuously since the year 2000 and has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C1 to C3 are the copies of bills relating to the petitioner.

17. Ex. RW1/D is the copy of Award dated 13.1.2005 passed in Reference No.278/2001 (RBT No.311/04) by this Tribunal.

18. Ex. RW1/E is the copy of letter dated 14.5.1995 regarding application of Smt. Nirmla Devi w/o late Sh. Roop Lal, Daily Wager from Principal CCF, H.P.

19. Ex. RW1/F is the copy of order dated 9.7.2003 passed in O.A. (M) No. 20/2000 by the Hon'ble Administrative Tribunal, Shimla.

20. Ex. RW1/F is the copy of letter dated 27.9.2008 regarding appointment of sons, daughters/real relatives of government servants died in harness-providing employment thereof.

21. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster-roll basis. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of July, 2004 by the respondent. Although, the petitioner has claimed that her services were engaged in the year 1996, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct.

22. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is July, 2004. Placed on record by the petitioner is the Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31.12.2012. It reflects the name of the petitioner at serial No. 157 and that her services were engaged as a daily wager on 7.12.2007. A revised Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30.11.2016, has also been placed on record by the petitioner as Ex. PW1/C. As per this document the initial date of engagement of the petitioner has been reflected as 1.7.2004. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of the budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. As per the seniority list of daily wagers of Joginder Nagar Forest Division, Ex. PW1/D, nine daily wagers shown therein have completed 240 days or more in a year. Persons working for 240 days or more in a year cannot be termed as seasonal workers. Even otherwise, it is nowhere the plea taken by the respondent nor there is any *iota* of evidence on record to show that the forest department has been declared as a seasonal factory, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the Government specifying the forest department as a seasonal industry.

23. The version of the petitioner is that she had worked with the respondent/department upto March, 2013. In the month of March, 2013, her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the year 2013 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 2004. The putting of this

suggestion by the petitioner and its admission by the respondent leaves no doubt in mind that the petitioner admits that she is still serving in the department. Then, the Divisional level revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30.11.2016, Ex. PW1/C reflected the name of the petitioner at serial No. 57. As per this document the services of the petitioner were engaged as a daily wager on 1.7.2004. It is an admitted document on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of March, 2013, her name ought not to have been reflected in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in March, 2013 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after March, 2013 has worked with the respondent, finds support from the seniority list, Ex. PW1/C, as it reflected the seniority of the daily waged labourers, as it stood on 30.11.2016. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of March, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of March, 2013, it cannot be said that the termination/retrenchment order is illegal and unjustified.

24. So far as providing the fictional breaks to the petitioner by the respondent from time to time from July, 2004 to March, 2013 is concerned, I would like to say that the said assertion of the petitioner appears to be true. As per the mandays chart, Ex. RW1/B, the work for the entire month was never being provided to the petitioner by the respondent. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had herself abandoned the work of her own free will and volition. If the petitioner used to remain absent from her duties, then why the respondent did not issue any show cause notice to her or initiate disciplinary proceedings against her? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per her sweet will and convenience is incorrect. A plea was also taken to the effect that since August, 2011, the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B for the month of August, 2011 and for the months of July, 2012 and March, 2013, the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of March, 2013, is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

25. These issues are decided accordingly.

Issue No. 4 :

26. Not pressed.

Issue No. 5 :

27. In *Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled *Liaq Ram Vs. State of H.P. and others*, 2012 (2) Him. L.R (FB) 580(majority view) will also be advantageous on this aspect of the matter.

29. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a young woman like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she owns land, which she cultivates. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondent.

Relief :

31. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of her services in the month of March, 2013 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from July, 2004 till March, 2013 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 584/2016
Date of Institution : 24-8-2016
Date of Decision : 30-4-2019

Shri Roop Lal s/o Shri Keshav Ram, r/o Village Bagli, P.O. Batwada, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Roop Lal s/o Shri Keshav Ram, r/o Village Bagli, P.O. Batwada, Tehsil Sunder Nagar, District Mandi, H.P. during December, 1998 by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District Mandi, H.P., who had worked on daily wages only for 27 days in year, 1998 and has raised his industrial dispute after more than 11 years *vide* demand notice dated 17.08.2010, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period of 27 days only in year, 1998 and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1997 and thereafter he worked continuously without any break till the year 1998. His services were orally dispensed with by the respondent in the end of the year 1998. He had approached the respondent time and again for his re-engagement, but without success. Fictional breaks were intentionally given to him by the respondent, so that he could not complete 240 days in any year. A number of juniors, as detailed in para 5 of the petition, were retained by the respondent. Even new/fresh hands were engaged by the respondent after the retrenchment of the petitioner. No opportunity of re-engagement was ever given to the petitioner. The action of the respondent is stated to be in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding no fundamental or legal right of the petitioner having been infringed and that the petition is bad on account of delay and laches, have been taken.

On merits, it was asserted that the petitioner had only worked intermittently for 13 days in the year 1998 and that he had left the job of his own sweet will, without intimating the department. He had never continuously worked for 240 days in any calendar year and had left the job in March, 1998. He thereafter had never approached the respondent/department. The services of the petitioner had never been terminated by the respondent. No representations were ever made by the petitioner to the respondent. No fictional breaks were given to the petitioner. His demand for re-engagement at a belated stage cannot be accepted. Only those workers were regularized by the respondent, who had continuously worked and had fulfilled the criteria of the Government policy for regularization. Some workers were engaged on compassionate grounds and also as per the orders of the Court. The respondent had not violated any of the provisions of the Act. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 21.6.2018:

- (1) Whether termination of services of the petitioner by respondents during December, 1998 is/was legal and justified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Roop Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of seniority list of workers as Ex. PW1/B. The respondent examined one Shri D. R. Chauhan as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B and copy of seniority list as Ex. RW1/C.

7. Arguments of the Learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|--|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : Not pressed |
| Issue No. 4 | : No |
| Relief. | : Petition is partly allowed awarding lump sum compensation of ₹7,000/- per operative part of the award. |

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Roop Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had only worked for 13 days in February, 1998. Volunteered that, he had worked regularly from the year 1997 upto the year 1998. He denied that he had never worked continuously during these years. He also denied that no junior to him had been kept at work by the department. He admitted that he had raised a demand notice in the year 2010. He specifically denied that from March, 1998 upto the year 2010, no representation was ever made by him. Self stated that he had corresponded with the department for being re-engaged in the years 1999, 2000, 2002 to 2005, 2007 and 2009. He had to admit that no record of such correspondence has been annexed with the file, nor he can produce it. He clearly admitted that he owns land, which he cultivates. He was also categorical that he does the days' drudgery privately. He also admitted that he had not given a detail of the persons whose names had been mentioned in paras 5 of the petition and his affidavit. He denied that he had neither been removed from work, nor given fictional breaks by the department.

11. Ex. PW1/B is the copy of seniority list of workers of HPPWD Division Sunder Nagar, District Mandi relating to Shri Sunder Ram & others.

12. Conversely, Shri D.R. Chauhan, Executive Engineer, HPPWD Division, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that the seniority list Ex. PW1/C had been issued by their office. He feigned ignorance that a detail of the juniors, who have been kept at work, is there in this list. Volunteered that, there is no date of initial engagement mentioned in it. He specifically denied that before keeping juniors at work, after the year 1998, no notice was issued to the petitioner for being re-engaged. He admitted that no retrenchment compensation had been paid. He clearly denied that fictional breaks had intentionally been given to the petitioner so that he could not work for 240 days or more. He categorically admitted that as per the record no notice under Section 25-F of the Act had been given to the petitioner. They had never removed the petitioner from work. Self stated that, he himself had left the job. They had never charge-sheeted the petitioner. He admitted that there was no correspondence with the petitioner for his returning back to work.

13. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of combined seniority list relating to Shri Sher Singh and others.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1997 and that he had worked as such upto the year 1998. The respondent took the stand that the petitioner had only worked as a daily waged beldar for 13

days in the year 1998. Although, the petitioner (PW1) in his cross-examination denied the fact that he had only worked for 13 days in the month of February, 1998, but placed on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. It reveals that the services of the petitioner had been engaged by the respondent in the month of February, 1998 as a daily waged beldar and he had only worked as such in that month for 13 days. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1997 and that he had continuously worked as such upto the year 1998, as claimed by him.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri D. R. Chauhan (RW1) clearly admitted that the petitioner had never been charge-sheeted. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. From the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his year of retrenchment i.e. 1998. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

18. Ex. RW1/C is the combined seniority list of daily waged beldars. It is admitted by Shri D. R. Chauhan (RW1) that this seniority list has been issued by their office. Manifest that it is an admitted document on the part of the respondent. From this document, it is clear that the services of the persons whose names figure from serial No. 37 to 105, were re-engaged/engaged in the years 1999, 2000, 2001, 2002, 2003, 2006, 2008 and 2009, either on Court orders or on compassionate grounds. The dates of initial engagement of those persons who were re-engaged as per Court orders have not come on the file. The dates of deaths of the husbands or parents of those persons, who were appointed on compassionate grounds, have also not come on record. It is nowhere the case of the respondent that such persons are not serving the respondent/department. Admittedly, their services were engaged after the engagement of the services of the petitioner. The years of engagement of such persons are shown to be from the year 1999 onwards upto the year 2009. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is February, 1998. There is nothing on record to show that the persons who were re-engaged as per Court orders and that the deceased parents and husbands of those persons who were appointed on compassionate grounds, were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. It is an admitted case of the respondent (RW1) that no opportunity of re-employment was given to the petitioner. Thus, the respondent has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in

their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

20. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

21. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is doing the days' drudgery privately. He also admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. The Learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

23. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors.**, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising

industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about one month and actually worked for 13 days as per mandays chart on record and that his services were disengaged in December, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than **eleven years** i.e. demand notice was given on 17.8.2010. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. In his substantive evidence, the petitioner (PW1) was categorical that neither he had annexed such record, nor he could produce the same. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 41 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹7,000/- (Rupees seven thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondent and in favour of the petitioner.

Issue No. 3 :

26. Not pressed.

Relief :

27. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹7,000/- (Rupees seven thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till

realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 88/2017
Date of Institution : 28-3-2017
Date of Decision : 30-4-2019

Shri Chaman Lal s/o Shri Pyaro Lal, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. *.Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P. *.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.

For the Respondent(s) : Sh. S. S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chaman Lal s/o Shri Pyaro Lal, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 8 years *vide* demand notice-nil-dated 08.06.2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of after about 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1999 in Rakh Division, HPPWD Rakh and thereafter had worked continuously without any break till the year 2003. His services were interrupted between the year 1999 to 2003 by the respondent by giving notional fictional breaks due to which he could not complete 240 days as required under section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the year 2003. Thereafter, he had moved the Hon'ble Administrative Tribunal by filing O.A. (D) No. 79/2003, when directions were given to the respondent to re-engage him as and when work and funds were available, in accordance with seniority. The petitioner had supplied a copy of the order to the respondent *vide* letter dated 28.7.2003 for compliance. His services were re-engaged, but in March, 2004, he was again terminated without any prior notice. When asked, he was told by his superior officers that he would be engaged very soon. Persons junior to him, namely, S/Shri Kaniya, Sarwan and S/Smt. Nikko Devi and Kamla Devi were engaged in the year 2000 on daily waged basis as beldars and they all were continuously engaged by the respondent without any breaks, and had completed more than 240 days from the date of their initial appointment. The principle of 'last come first go' had not been adhered to by the respondent. The work and funds were available with the respondent, but the services of the petitioner were not engaged, which was unfair labour practice as envisaged under Section 2 (ra) read with Fifth Schedule of Clause 10 of the Act. It was asserted that after terminating the services of the petitioner, the respondent had engaged various persons, namely, S/Smt. Puni, Sheetla and S/Shri Rajinder Singh, Mahinder & Rajinder, who were appointed in Sub Division Rakh in the year 2008-2009, but no opportunity for re-employment was afforded to him, which is clearly in violation of the provisions of Section 25-H of the Act. An industrial dispute was then raised by the petitioner before the Labour Officer-*cum*-Conciliation Officer, Chamba. When conciliation failed before the Labour Inspector-*cum*-Conciliation Officer, a failure report was sent to the Labour Commissioner, who after examining the report had declined to refer the matter to the Court. The petitioner immediately thereafter had filed Civil Writ Petition No.704/2016, which was decided on 4.4.2016 by the Hon'ble High Court, whereby the order of the Labour Commissioner had been set aside, with a direction to make a reference for adjudication. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding no fundamental or legal right of the petitioner having been infringed, lack of maintainability and that the petition is bad on the ground of delay and laches, have been taken.

On merits, it is denied that the petitioner had worked upto the year 2003. It is admitted that the services of the petitioner had been engaged by the respondent as a daily waged beldar *w.e.f.* November, 1999 and who had worked intermittently upto March, 2004. It is averred that the petitioner had never completed 240 days in any calendar year and had not fulfilled the conditions of Section 25-B of the Act. It is denied that the notional breaks had been given to the petitioner. It is admitted that the petitioner had worked intermittently *w.e.f.* November, 1999 upto March, 2004. Thereafter, the petitioner had left the work of his own sweet will in February, 2003. The persons mentioned in para No. 5 of the claim petition had never worked with the respondent. Smt. Kamla Devi was senior to the petitioner. It is denied that the respondent had not followed the principle of 'last come first go'. No junior to the petitioner had ever been retained nor new/fresh hands engaged by the respondent, so the provisions of Sections 25-G and 25-H of the Act had not been violated. As per the orders of the Hon'ble Tribunal, the petitioner was re-engaged, but he had only worked in the month of March, 2004 and thereafter had abandoned the job. The petitioner had never approached the respondent thereafter and had raised the demand notice in the year 2011, *i.e.* after about seven years, without an explanation. S/Smt. Punia, Sheela,

S/Sh. Rajinder Singh, Mahinder and Rajinder s/o Dishu, all had been engaged on compassionate grounds. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 29.6.2018:

- (1) Whether termination of the services of petitioner by the respondent during March, 2004 is/was legal and justified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the Learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the Learned Counsel for the petitioner and Learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Ye
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: No
<i>Relief</i>	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in March, 2004 by violating the

provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1999 and had continuously worked as such till the year 2003. It was also his claim that notional breaks were given to him by the department from the year 1999 upto the year 2003 so that he could not complete 240 days, as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the Learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R. M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of March, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 5 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh. Kaniya & Sarwan and S/Smt. Nikko Devi

& Kamla, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the Learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

32. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 376/2016
Date of Institution : 02-6-2016
Date of Decision : 30-4-2019

Shri Kuldeep s/o Shri Mankoo Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kuldeep s/o Shri Mankoo Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1999 in Rakh Division, HPPWD Rakh and thereafter had worked continuously without any break till the year 2003. His services were interrupted between the year 1999 to 2003 by the respondent by giving notional fictional breaks due to which he could not complete 240 days as required under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in the year 2003. Thereafter, he had moved the Hon’ble Administrative Tribunal by filing O.A. (D) No. 90/2003, when directions were given to the respondent to re-engage him as and when work and funds were available, in accordance with seniority. The petitioner had supplied a copy of the order to the respondent *vide* letter dated 28.7.2003 for compliance. His services were re-engaged, but in March, 2004, he was again terminated without any prior notice. When asked, he was told by his superior officers that he would be engaged very soon. Persons junior to him, namely, S/Shri Kaniya, Sarwan and S/Smt. Nikko Devi and Kamla Devi were engaged in the year 2000 on daily waged basis as beldars and they all were continuously engaged by the respondent without any breaks, and had completed more than 240 days from the date of their initial appointment. The principle of ‘last come first go’ had not been adhered to by the respondent. The work and

funds were available with the respondent, but the services of the petitioner were not engaged, which was unfair labour practice as envisaged under Section 2 (ra) read with Fifth Schedule of Clause 10 of the Act. It was asserted that after terminating the services of the petitioner, the respondent had engaged various persons, namely, S/Smt. Puni, Sheetla and S/Shri Rajinder Singh, Mahinder & Rajinder, who were appointed in Sub-Division Rakh in the year 2008-2009, but no opportunity for re-employment was afforded to him, which is clearly in violation of the provisions of Section 25-H of the Act. An industrial dispute was then raised by the petitioner before the Labour Officer-cum-Conciliation Officer, Chamba. When conciliation failed before the Labour Inspector-cum-Conciliation Officer, a failure report was sent to the Labour Commissioner, who after examining the report had declined to refer the matter to the Court. The petitioner immediately thereafter had filed Civil Writ Petition No. 737/2016, which was decided on 6.4.2016 by the Hon'ble High Court, whereby the order of the Labour Commissioner had been set aside, with a direction to make a reference for adjudication. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding no fundamental or legal right of the petitioner having been infringed, lack of maintainability and that the petition is bad on the ground of delay and laches, have been taken.

On merits, it is denied that the petitioner had worked upto the year 2003. It is admitted that the services of the petitioner had been engaged by the respondent as a daily waged beldar *w.e.f.* November, 1999 and who had worked intermittently upto March, 2004. It is averred that the petitioner had never completed 240 days in any calendar year and had not fulfilled the conditions of Section 25-B of the Act. It is denied that the notional breaks had been given to the petitioner. It is admitted that the petitioner had worked intermittently *w.e.f.* November, 1999 upto March, 2004. Thereafter, the petitioner had left the work of his own sweet will in February, 2003. The persons mentioned in para No. 5 of the claim petition had never worked with the respondent. Smt. Kamla Devi was senior to the petitioner. It is denied that the respondent had not followed the principle of 'last come first go'. No junior to the petitioner had ever been retained nor new/fresh hands engaged by the respondent, so the provisions of Sections 25-G and 25-H of the Act had not been violated. As per the orders of the Hon'ble Tribunal, the petitioner was re-engaged, but he had only worked in the month of March, 2004 and thereafter had abandoned the job. The petitioner had never approached the respondent thereafter and had raised the demand notice in the year 2011, *i.e.* after about seven years, without an explanation. S/Smt. Punia, Sheela, S/Sh. Rajinder Singh, Mahinder and Rajinder s/o Dishu, all had been engaged on compassionate grounds. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 29.6.2018:

- (1) Whether termination of the services of petitioner by the respondent during March, 2004 is/was legal and justified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged?

. . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the Learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the Learned Counsel for the petitioner and Learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Yes
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: No
<i>Relief</i>	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in March, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1999 and had continuously worked as such till the year 2003. It was also his claim that notional breaks were given to him by the department from the year 1999 upto the year 2003 so that he could not complete 240 days, as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the Learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the

purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of March, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 5 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh. Kaniya & Sarwan and S/Smt. Nikko Devi & Kamla, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the Learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the

pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In *Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 336/2016
Date of Institution : 26-5-2016
Date of Decision : 30-4-2019

Shri Chain Singh s/o Shri Seth, r/o Village Guwar, P.O. Radi, Tehsil and District Chamba,
H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
 For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chain Singh s/o Shri Seth, r/o Village Guwar, P.O. Radi, Tehsil and District Chamba, H.P. during February, 2003 by the Executive Engineer, H.P.P.W.D. Division, Bharmaur, District Chamba, H.P., who had worked on daily wages for 76 days during year, 2001, for 52 days during year, 2002 and for 24 days during year, 2003 respectively and has raised his industrial dispute after more than 8 years *vide* demand notice dated-nil-received on 15.06.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 76 days during year, 2001, for 52 days during year, 2002 and for 24 days during year, 2003 respectively and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1999 in Rakh Division, HPPWD Rakh and thereafter had worked continuously without any break till the year 2003. His services were interrupted between the year 1999 to 2003 by the respondent by giving notional fictional breaks due to which he could not complete 240 days as required under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in the year 2003. Thereafter, he had moved the Hon’ble Administrative Tribunal, when directions were given to the respondent to re-engage him as and when work and funds were available, in accordance with seniority. The petitioner had supplied a copy of the order to the respondent *vide* letter dated 28.7.2003 for compliance. His services were re-engaged, but in March, 2004, he was again terminated without any prior notice. When asked, he was told by his superior officers that he would be engaged very soon. Persons junior to him, namely, S/Shri Kaniya, Sarwan and S/Smt. Nikko Devi and Kamla Devi were engaged in the year 2000 on daily waged basis as beldars and they all were continuously engaged by the respondent without any breaks, and had completed more than 240 days from the date of their initial appointment. The principle of ‘last come first go’ had not been adhered to by the respondent. The work and funds were available with the respondent, but the services of the petitioner were not engaged, which was unfair labour practice as envisaged under Section 2 (ra) read with Fifth Schedule of Clause 10 of the Act. It was asserted that after terminating the services of the petitioner, the respondent had engaged various persons, namely, S/Smt. Puni, Sheetla and S/Shri Rajinder Singh, Mahinder & Rajinder, who were appointed in Sub-Division Rakh in the year 2008-2009, but no opportunity for re-employment was afforded to him, which is clearly in violation of the provisions of Section 25-H of the Act. An industrial dispute was then raised by the petitioner before the Labour Officer-*cum*-Conciliation Officer, Chamba. When conciliation failed before the Labour Inspector-*cum*-Conciliation Officer, a failure report was sent to the Labour Commissioner, who after examining the report had declined to refer the matter to the Court. The petitioner immediately thereafter had filed Civil Writ Petition No. 796/2016, which was decided on 7.4.2016 by the Hon’ble High Court, whereby the order of the Labour Commissioner had been set aside, with a direction to make a reference for adjudication. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding no fundamental or legal right of the petitioner having been infringed, lack of maintainability and that the petition is bad on the ground of delay and laches, have been taken.

On merits, it is denied that the petitioner was engaged in the year 1999. It is claimed that the services of the petitioner had been engaged by the respondent as a daily waged beldar *w.e.f.* June, 2001 and who had worked intermittently upto February, 2003. It is averred that the petitioner had never completed 240 days in any calendar year and had not fulfilled the conditions of Section 25-B of the Act. It is denied that notional breaks had been given to the petitioner. Thereafter, the petitioner had left the work of his own sweet will in February, 2003. The persons mentioned in para No. 5 of the claim petition had never worked with the respondent. Smt. Kamla Devi was engaged by the respondent on compassionate grounds. She was senior to the petitioner. It is denied that the respondent had not followed the principle of 'last come first go'. No junior to the petitioner had ever been retained nor new/fresh hands engaged by the respondent, so the provisions of Sections 25-G and 25-H of the Act had not been violated. The petitioner had never approached the respondent thereafter and had raised the demand notice in the year 2012, *i.e.* after about eight years, without an explanation. S/Smt. Puni, Sheela, S/Sh. Rajinder Singh, Mahinder and Rajinder s/o Dishu, all had been engaged on compassionate grounds. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 1.12.2018:

- (1) Whether termination of the services of petitioner by the respondent during February, 2003 is/was legal and justified as alleged? . . .*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the Learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the Learned Counsel for the petitioner and Learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Yes
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: No
<i>Relief</i>	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in February, 2003 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1999 and had continuously worked as such till the year 2003. It was also his claim that notional breaks were given to him by the department from the year 1999 upto the year 2003 so that he could not complete 240 days, as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the Learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a

period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of February, 2003. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 5 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh. Kaniya & Sarwan and S/Smt. Nikko Devi & Kamla, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the Learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 796//2016
Date of Institution : 19-11-2016
Date of Decision : 30-04-2019

Shri Kali Dass s/o Shri Sukkad Ram, r/o Village & P.O. Raipur, Tehsil Bhatiyat,
District Chamba, H.P. . *Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Himachal Pradesh, Shimla-171 001.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
For the Respondent(s) : Sh. S. S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Kali Dass s/o Sh. Sukkad Ram r/o Village & P.O. Raipur, Tehsil Bhatiyar, Distt. Chamba, H.P. *w.e.f.* 1-4-2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001 and (2) the

Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis from 1-12-1995 to 31-3-2006 and has raised his industrial dispute *vide* demand notice dated 13-4-2015 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as a daily waged Beldar on muster-roll basis by the respondents *w.e.f.* 1.12.1995, without any appointment order and settlement of terms and conditions. On the verbal orders, he was deputed by the respondents to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondents without any breaks upto 31.03.2006 and had completed 240 days in each calendar year. During the period from the year 1993 upto 31.3.2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondents/department on 1.4.2006, with prior notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31.3.2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of 'last come first go' as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31.12.2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and for non-joinder of necessary parties and that when the project is closed due to non-availability of funds, the employees of the said project have to go alongwith the closed project, have been taken.

On merits, it is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wagger during the year 1994 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondents are not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondents, the question of adjusting other workers by the respondents does not arise. No verbal assurance had ever been given by the respondents to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondents also did not arise. The petitioner is working as and agriculturist and is gainfully employed.

In these circumstances, the respondents prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18.10.2017:

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 01.04.2006 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kali Dass appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.200, 29.2.2004, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K and copies of RTI information dated 4.1.2011, 22.9.2011 & 18.9.2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.2009 as Ex. PW1/N, copy of order dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q, copies of letters dated 20.2.2009, 12.5.2009 and 1.1.2010 as Ex. PW1/R, copy of representation dated 12.2.2011 as Ex. PW1/S and copy of letter dated 7.3.2011 as Ex. PW1/T. The respondents examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

7. Arguments of the Learned Authorized Representative for the petitioner and Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Yes
<i>Issue No. 2</i>	: Decided accordingly
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: Not pressed
<i>Issue No. 5</i>	: Not pressed
<i>Relief</i>	: Petition is partly allowed awarding lump-sum compensation of Rs. 2,00,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

9. Shri Kali Dass (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 1.6.1994 in the said project. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2005 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in April, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates.

10. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

11. Ex. PW1/C is the copy of letter dated 1.1.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

12. Ex. PW1/D is the copy of letter dated 15.12.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

13. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

14. Ex. PW1/F is the copy of letter dated 15.2.2006 regarding closure of Indo-German Changer Project Palampur.

15. Ex. PW1/G is the copy of letter dated 29.4.2009 regarding appointment of daily waged drivers-Information under RTI thereof.

16. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

17. Ex. PW1/I is the copy of letter dated 2.1.2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

18. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

19. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

20. Ex. PW1/M is the copy of letter dated 22.9.2014 regarding information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

21. Ex. PW1/N is the copy of order dated 1.12.2009 passed in Suit No.172/2008 by the Learned Civil Judge (Sr. Division) Palampur.

22. Ex. PW1/O is the copy of order dated 28.2.2013 passed by the Learned Additional District Judge-II, Kangra at Dharamshala in Civil Appeal No.271-P/2010.

23. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

24. Ex. PW1/Q is the copy of Award dated 2.12.2008 passed in Reference No. 117/2007 by this Court.

25. Ex. PW1/R is the copy of letter dated 20.2.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project, Palampur-willingness thereof.

26. Ex. PW1/S is the copy of letter dated 16.2.2011 regarding representation/request of the peoples.

27. Ex. PW1/T is the copy of letter dated 7.3.2011 regarding re-engagement of daily waged workers of Indo-German Changer Project, Palampur and IWDP (Hills) Kandi Area.

28. Conversely, Shri B. S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster-roll. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto the year 2006, the petitioner had continuously worked for more than 240 days. Volunteered that, he had worked upto the year 2005. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was also admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. He further admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar had been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

29. Ex. RW1/B is the copy of mandays chart relating to the petitioner and others.

30. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof

is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents. Respondents denied this fact and claimed that the petitioner was never engaged by the department and took the stand that he was employed in Indo-German Changer Project, Palampur, which was a foreign aided project. There is no denial of the fact that the aforesaid project was under the supervision and control of the senior government officers, headed by Secretary Forests to the Government of Himachal Pradesh. It is an admitted fact on the part of the respondents that the above named project had been closed in the year 2006. RW1 Shri B.S. Yadav, while under cross-examination was categorical that on the closure of the project, the Eco Development Society, Palampur had handed over the entire record of this project to respondent No. 2. As per the respondents, the petitioner cannot be re-engaged without prior approval of the Government of Himachal Pradesh. Admittedly, no appointment letter had ever been issued to the petitioner, nor any terms and conditions of his services were settled. RW1 Shri B.S. Yadav clearly admitted in his substantive evidence that as per the record handed over by the society, no appointment letter of the petitioner was found. Now, the question which arises for consideration is whether in the absence of any appointment letter and the settlement of the terms and conditions of service, it could be inferred that the petitioner had been appointed by Indo-German Changer Project, Palampur only for a limited period or to work till the closure of the project, as has been claimed by the respondents in their reply.

32. No grain of evidence has been led on record by the respondents to show that the petitioner had been appointed by the Indo-German Changer Project, Palampur and that he was a temporary employee. Be it recorded here at the risk of repetition that respondent No. 2 while under cross-examination was categorical that as per the record of the project submitted by the society, no appointment letter of the petitioner was found. There is also no cogent and reliable evidence, except for the self serving and oral testimony of respondent No. 2, that the petitioner had only been specifically appointed to work in the project. No such document, on the closure of the project, has been produced and exhibited on record by the respondents to show that the petitioner had specifically been appointed for the project. There is not an *iota* of evidence on record that the petitioner had been put to notice at any stage in writing that his employment was in the project. There is also no evidence on the part of the respondents to show that the petitioner had ever been apprised or made aware of the fact that his employment would come to an end with the closure of the project. In the absence of any such evidence on record and taking into account the evidence of the petitioner, it can safely be inferred that the petitioner had been appointed by the forest department and he had been deputed to work in the Indo-German Changer Project, Palampur. As per the mandays chart, copy of which has been placed on record by the respondents itself as Ex. RW1/B, it reveals that the petitioner had been appointed in the year 1994 as a daily paid worker and had continued to work as such till the year 2005. In this document there is a note that the petitioner had left the work. It was vociferously argued for the respondents that this document reveals that the petitioner himself had abandoned the job after the year 2005, so no provision of the Act can be said to have been violated. This cannot be accepted. It is well known that the abandonment has to be proved like any other fact by the respondents/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it

cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Then, no muster-roll has been proved on record by the respondents to show that the petitioner had been marked absent after the year 2005. It is, therefore, difficult to accept the respondents' claim of abandonment, particularly when evidence has been led on record by the petitioner to show that his services had been terminated by the respondents on 1.4.2006.

33. The petitioner in his substantive evidence claimed that he had worked on daily wage basis on muster-roll with effect from December, 1995 without any appointment order or settlement of any terms and conditions of his service and that he had been deputed by the respondents *vide* a verbal order to work with IGCP, Palampur, which was under the control of the Forest Department of the State Government. When his cross-examination is seen, nothing has been extracted by the respondents so as to dislodge him on this count. Then, as discussed above the respondents' witness Shri B.S. Yadav, Divisional Forest Officer, Forest Division, Palampur maintained in his cross-examination as RW1 that the Changer Project came to an end in the year 2006. He also testified that the record in respect of the project, was handed over to Divisional Forest Officer, Forest Division, Palampur. It was also clear from the cross-examination of this witness that no appointment order of the petitioner existed in that record, which only goes to show that Indo-German Changer Project, Palampur, had never appointed the petitioner or that he was engaged only to work in the said project, as claimed by the respondents. So, from the testimony of the petitioner coupled with the other ocular and documentary evidence on record, it can safely be inferred that there existed a relationship of workman and employer between the parties.

34. It was contended by the Learned Deputy District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with effect from 1.12.1995 upto 31.3.2006 and had been completing more than 240 days in each calendar year.

35. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Claiming to have worked continuously *w.e.f.* 1.12.1995 upto 31.3.2006, the petitioner in his affidavit Ex. PW1/A claimed to have thus completed 240 days in each of the said calendar years. This claim of his has been challenged by the respondents. As per the mandays chart/seniority list Ex. RW1/B, the petitioner had worked for 171 days in the year 2005 in the project in question.

37. Section 25-F of the Act, which is alleged to have been violated by the respondents, provides that no workman employed in any industry, who has been in continuous service for no

less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. As discussed above, the expression "continuous service" has been defined under Section 25-B of the Act. Since, the petitioner is not proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, which as per the reference took place 1.4.2006, no notice was required to be served upon him by the respondents, as envisaged under Section 25-F of the Act. In this view of the matter, it can safely be held that the respondents have not violated the said provisions.

38. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 13 of the statement of claim. Shri Kali Dass (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, mandays chart/seniority list has itself been placed and exhibited on record by the respondents as Ex. RW1/B. The name of the petitioner figures at Serial No. 44 of the list. A perusal of this document would further reveal that the persons whose names figure from Serial Nos. 45 to 85 of the list, were all appointed from July, 1994 upto June, 1999, whereas the services of the petitioner, whose name figures at Serial No. 44 of the list, were engaged on 1.6.1994. As per this document the persons whose names figure at Serial No. 45 to 48, 50 to 56, 58 to 69, 73, 75, 79 to 85 are shown to have worked upto the year 2006. As per the reference the services of the petitioner were terminated on 1.4.2006. There is nothing on record to show that the persons named from serial Nos. 45 to 85 of the list were senior to the petitioner. So, it is clear from the mandays chart/seniority list that persons junior to him had been retained by the respondents at the time of termination of his services. This indicates that persons junior to the petitioner had still been serving the respondents/department, after the termination of his services. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice.

39. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

40. The petitioner's allegation that the respondents had also violated the provisions of Section 25-N of the Act as well, to my mind, does not appear to have been substantiated for want of plausible evidence.

41. In view of the discussion and findings aforesaid, I have no hesitation to conclude that the respondents have contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

42. This issue is decided accordingly in favour of the petitioner and against the respondents.

Issues No. 2 and 4 :

43. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

44. The Learned Deputy District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his

claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

45. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

46. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a middle aged man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land and does agricultural chores. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

47. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In this case, the factors which have weighed with this Court are that the petitioner in all remained engaged for

about twelve years and had actually worked for 3972 days as per mandays chart on record and that his services were disengaged on 1.4.2006, who had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than **nine years** i.e. demand notice was given on 13.4.2015. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 42 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

48. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹2,00,000/- (Rupees two lakhs only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization.

49. Issue No. 2 is decided accordingly, while issue No. 4 is decided against the respondents and in favour of the petitioner.

Issues No. 3 and 5 :

50. Not pressed.

Relief :

51. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of ₹2,00,000/- (Rupees two lakhs only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 795//2016
Date of Institution : 19-11-2016
Date of Decision : 29-04-2019

Smt. Sudershna Kumari w/o Shri Sushil Kumar, r/o Village Kamad, P.O. Karanghat, Tehsil Jaisinghpur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Himachal Pradesh, Shimla-171 001.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Sudershna Kumari w/o Shri Sushil Kumar r/o Village Kamad, P.O. Karanghat, Tehsil Jaisinghpur, Distt. Kangra, H.P. *w.e.f.* 15-12-2001, by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001 and (2) the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis from 4-3-1997 to 14-12-2001 and has raised her industrial dispute *vide* demand notice dated 15-7-2015 after more than 13 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged as a daily waged Beldar on muster-roll basis by the respondent *w.e.f.* 4.3.1997, without any appointment order and settlement of terms and conditions. On the verbal orders, she was deputed by the respondent to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sunil Kumar. She had worked continuously with the respondents without any breaks upto 14.12.2001 and had completed 240 days in each calendar year. During the period from the year 1997 upto 14.12.2001, the salary was paid to her by the Forest Department. Her work and conduct had been found satisfactory for this period. However, her services were unlawfully terminated by the respondents/department *w.e.f.* 15.12.2001 without any notice. On her asking, she was told that as funds and work were not available with the department, it has been decided to reduce the strength of workmen working in the IGCP, Palampur, being under the control of forest department. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon her, nor she was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondents had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Gian Chand, Sushil Kumar, Ranjeet Singh, Jaspal Singh

Rana and Smt. Anita Bakshi who all were junior to the petitioner, had been continuously retained in the department (IGCP) by the respondents. From the year 2002 uptil the year 2005, the petitioner had approached the respondent many a times to re-engage her, but without success. The project was closed by the respondents on 31.3.2006, as informed during the conciliation. The services of Shri Sushil Kumar have been re-engaged by the respondent *w.e.f.* 30.8.2013 and at present he is working on regular basis. No opportunity for re-employment was given to the petitioner. Thereafter, there had been correspondence between the State Government and the forest department regarding re-engagement of the retrenched workers of IGCP and IWDP (Hills), Kandi area, in some other departments. The petitioner alongwith other retrenched workers had given their willingness, as desired, but she alongwith others were not re-engaged by the respondents or the State Government. Only verbal assurances were given to the petitioner and other retrenched workers by the respondents that they would be re-engaged, when final instructions were received from the State Government. As nothing was heard and they were not re-engaged till the year 2013, the petitioner had raised a demand notice on 15.7.2015. Settlement proceedings took place before the Labour Officer, Dharamshala, but without success. A failure report was sent to the Labour Commissioner, Shimla for making the reference, which was made to this Court. The act of the respondents in retrenching the services of the petitioner is claimed to be highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. They filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and for non-joinder of necessary parties and that when the project is closed due to non-availability of funds, the employees of the said project have to go alongwith the closed project, have been taken.

On merits, it is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. She was engaged as a daily wager during the year 1997 by Indo-German Changer Project, Palampur, being administered through Eco-Development Society. The respondents are not liable for any acts and deeds of the Eco-Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondents, the question of adjusting other workers by the respondents does not arise. No verbal assurance had ever been given by the respondents to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondents also did not arise. The petitioner is working as an agriculturist and is gainfully employed.

In these circumstances, the respondents prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18.10.2017:

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 15.12.2001 is/was illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

- (3) Whether the claim petition is not maintainable in the present form as alleged?
..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged?
..OPR.
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged?
..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Sudershna Kumari appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.2006, 29.2.2004, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K and copies of RTI information dated 4.1.2011 & 22.9.2011 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.009 as Ex. PW1/N, copy of order dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q, copy of seniority list dated 30.4.2003 as Ex. PW1/R, copy of maternity leave as Ex. PW1/S and copy of RTI information dated 14.8.2014 as Ex. PW1/T. The respondents examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Yes
<i>Issue No. 2</i>	: Decided accordingly
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: Not pressed
<i>Issue No. 5</i>	: Not pressed
<i>Relief</i>	: Petition is partly allowed awarding lump sum compensation of Rs.1,25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

9. Smt. Sudershna Kumari (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had worked in the Indo-German Changer Project, Palampur. Volunteered that, she had never worked in the project, but had worked in the forest department. She denied that she was engaged *w.e.f.* 4.3.1997 in the said project. She also denied that she had left the work after 14.12.2001. Self stated that, she was on maternity leave. She further denied that after the maternity leave she had never reported back to work. She feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. She also showed her

ignorance that the project was a German aided project. She was also not aware that the forest department had no concern with the project. She denied that she was kept on temporary basis in the project. She denied that she had neither been kept nor removed from work by the forest department. She denied that from the year 2001 upto the year 2015, she had not raised the dispute. She admitted that she had raised the demand notice in July, 2015. She categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. She admitted that she owns land, which she cultivates.

10. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

11. Ex. PW1/C is the copy of letter dated 1.1.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

12. Ex. PW1/D is the copy of letter dated 15.12.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWD.

13. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWD.

14. Ex. PW1/F is the copy of letter dated 15.2.2006 regarding closure of Indo-German Changer Project Palampur.

15. Ex. PW1/G is the copy of letter dated 29.4.2009 regarding appointment of daily waged drivers-Information under RTI thereof.

16. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

17. Ex. PW1/I is the copy of letter dated 2.1.2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

18. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

19. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

20. Ex. PW1/M is the copy of letter dated 22.9.2014 regarding information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

21. Ex. PW1/N is the copy of order dated 1.12.2009 passed in Suit No.172/2008 by the Learned Civil Judge (Sr. Division) Palampur.

22. Ex. PW1/O is the copy of order dated 28.2.2013 passed by the learned Additional District Judge-II, Kangra at Dharamshala in Civil Appeal No.271-P/2010.

23. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

24. Ex. PW1/Q is the copy of Award dated 2.12.2008 passed in Reference No.117/2007 by this Court.

25. Ex. PW1/R is the copy of seniority list relating to Shri Kuldeep Singh and others.

26. Ex. PW1/S is the copy of discharge summary relating to the petitioner.

27. Ex. PW1/T is the copy of letter dated 14.8.2014 with regard to information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

28. Conversely, Shri B. S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, she had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster-roll. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that, the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record, the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of her appointment upto the year 2006, the petitioner had continuously worked for more than 240 days. Volunteered that, she had worked upto the year 2001. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was also admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. He further admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar had been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

29. Ex. RW1/B is the copy of mandays chart relating to the petitioner and others.

30. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that she was a workman of the respondents. Respondents denied this fact and claimed that the petitioner was never engaged by

the department and took the stand that she was employed in Indo-German Changer Project, Palampur, which was a foreign aided project. There is no denial of the fact that the aforesaid project was under the supervision and control of the senior government officers, headed by Secretary Forest to the Government of Himachal Pradesh. It is an admitted fact on the part of the respondent that the abovenamed project had been closed in the year 2006. RW1 Shri B.S. Yadav, while under cross-examination was categorical that on the closure of the project, the Eco Development Society, Palampur had handed over the entire record of this project to the respondent No. 2. As per the respondents, the petitioner cannot be re-engaged without prior approval of the Government of Himachal Pradesh. Admittedly, no appointment letter had ever been issued to the petitioner, nor any terms and conditions of her services were settled. RW1 Shri B.S. Yadav clearly admitted in his substantive evidence that as per the record handed over by the society, no appointment letter of the petitioner was found. Now, the question which arises for consideration is whether in the absence of any appointment letter and the settlement of the terms and conditions of service, it could be inferred that the petitioner had been appointed by Indo-German Changer Project, Palampur only for a limited period or to work till the closure of the project, as has been claimed by the respondents in their reply.

32. In the case on hand, there is no grain of evidence led on record by the respondents to show that the petitioner had been appointed by the Indo-German Changer Project, Palampur and that she was a temporary employee. Be it recorded here at the risk of repetition that respondent No. 2 while under cross-examination was categorical that as per the record of the project submitted by the society, no appointment letter of the petitioner was found. There is also no cogent and reliable evidence, except for the self serving testimony of respondent No. 2, that the petitioner had only been specifically appointed to work in the project. No such document, on the closure of the project, has been produced and exhibited on record by the respondents to show that the petitioner had specifically been appointed for the project. There is not an iota of evidence on record that the petitioner had been put to notice at any stage in writing that her employment was in the project. There is also no evidence on the part of the respondents to show that the petitioner had ever been apprised or made aware of the fact that her employment would come to an end with the closure of the project. In the absence of any such evidence on record and taking into account the evidence of the petitioner, it can safely be inferred that the petitioner had been appointed by the forest department and she had been deputed to work in the Indo-German Changer Project, Palampur. As per the mandays chart, copy of which has been placed on record by the respondents itself as Ex. RW1/B, it reveals that the petitioner had been appointed in the year 1997 as a daily paid worker and had continued to work as such till the year 2001. In this document there is a note that the petitioner had left the work. It was vociferously argued for the respondents that this document reveals that the petitioner herself had abandoned the job after the year 2001, so no provision of the Act can be said to have been violated. This cannot be accepted. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand* reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for her alleged willful absence from duty. Then, no muster-roll has been proved on record by the respondents to show that the petitioner had been marked absent after the year 2001. It is, therefore, difficult to accept the respondents' claim of abandonment, particularly when evidence has been led on record by the petitioner to show that her services had been terminated by the respondents on 15.12.2001.

33. The petitioner in her substantive evidence claimed that she had worked on daily wage basis on muster roll with effect from 4.3.1997 without any appointment order or settlement of any terms and conditions of her service and that she had been deputed by the respondent *vide* a verbal order to work with IGCP, Palampur, which was under the control of the Forest Department of the State Government. When her cross-examination is seen, nothing has been extracted by the respondents so as to dislodge her on this count. Then, as discussed above the respondents' witness Shri B. S. Yadav, Divisional Forest Officer, Forest Division, Palampur maintained in his cross-examination as RW1 that the Changer Project came to an end in the year 2006. He also testified that the record in respect of the project, was handed over to Divisional Forest Officer, Forest Division, Palampur. It was also clear from the cross-examination of this witness that no appointment order of the petitioner existed in that record, which only goes to show that Indo German Changer Project, Palampur, had never appointed the petitioner or that she was engaged only to work in the said project, as claimed by the respondents. So, from the testimony of the petitioner coupled with the other ocular and documentary evidence on record, it can safely be inferred that there existed a relationship of workman and employer between the parties.

34. It was contended by the Learned Deputy District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had continuously worked with effect from 4.3.1997 upto 14.12.2001 and had been completing more than 240 days in each calendar year.

35. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she had worked for 240 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Claiming to have worked continuously *w.e.f.* 4.3.1997 upto 14.12.2001, the petitioner in her affidavit Ex. PW1/A claimed to have thus completed 240 days in each of the said calendar years. This claim having not been seriously challenged during her cross-examination by the respondents deserves acceptance, more so in view of the mandays chart/seniority list Ex. RW1/B, the correctness of which is not disputed by the respondents. As per this document, the petitioner had worked for 299 days in the year 1997, 362 days in the year 1998, 360 days in the year 1999, 365 days in the year 2000 and 323 days in the year 2001 in the project in question.

37. Section 25-F of the Act, which is alleged to have been violated by the respondents, provides that no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. As discussed above, the expression "continuous service" has been defined under Section 25-B of the Act. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of her retrenchment, her services could not be terminated unless she was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Although, it was claimed in the reply by the respondents

that such notice had been served upon the petitioner, but the same has only remained a mere saying on record. No such notice has seen the light of the day. In this view of the matter, it can safely be held that the respondents had violated the said provisions.

38. It is claimed by the petitioner that at the time of termination of her services, persons junior to her were retained in service by the respondents. A detail of such persons has been given in para 4 of the statement of claim. Smt. Sudershna Kumari (PW1) also named such persons to be junior to her in her chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after her alleged termination. Significantly, mandays chart/seniority list has itself been placed and exhibited on record by the respondents as Ex. RW1/B. Similar is the mandays chart/seniority list placed on the file by the petitioner as Ex. PW1/R. The name of the petitioner figures at Serial No. 4 of the list. A perusal of this document would further reveal that S/Shri Vinay Kumar, Ravi Kumar and Ranjeet Singh, whose names figure at Serial Nos. 5, 6 and 30 of the list, were all appointed in the year 1998, whereas the services of Shri Mauji Ram and Miss Bandna Kumari, whose names figure at Serial Nos. 32 and 33 of the list, were engaged in the year 1999. As per this document all the aforementioned persons are shown to have worked upto the year 2003. As per the reference the services of the petitioner were terminated in December, 2001. There is nothing on record to show that the abovenamed persons were senior to the petitioner. So, it is clear from the mandays chart/seniority list that persons junior to her had been retained by the respondents at the time of termination of her services. This indicates that persons junior to the petitioner had still been serving the respondent/department, after the termination of her services. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice.

39. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

40. The petitioner's allegation that the respondents had also violated the provisions of Section 25-N of the Act as well, to my mind, does not appear to have been substantiated for want of plausible evidence.

41. In view of the discussion and findings aforesaid, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-F and 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

42. This issue is decided accordingly in favour of the petitioner and against the respondents.

Issues No. 2 and 4:

43. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

44. The Learned Deputy District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

45. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

46. While testifying in the Court as PW1, the petitioner has given her age as 47 years. It is well known that a woman like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she owns land and nowadays is doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

47. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about five years and had actually worked for 1709 days as per mandays chart on record and that her services were disengaged in December, 2001, who had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than **thirteen years** i.e. demand notice was given on 15.7.2015. Although, the petitioner has claimed that from year 2002 upto the year 2005, she had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. At the risk of repetition, the

petitioner on the date of filing the claim petition was aged 47 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

48. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization.

49. Issue No. 2 is decided accordingly, while issue No. 4 is decided against the respondents and in favour of the petitioner.

Issues No. 3 and 5 :

50. Not pressed.

Relief :

51. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 870/2016
Date of Institution	: 26-11-2016
Date of Decision	: 10-04-2019

Shri Liyakat Ali, President J.L. Nehru Engineering College Workers Union, O/o House No.339/4, Salah, P.O. Bhojpur, Tehsil Sunder Nagar, District Mandi, H.P. and other workers
..Petitioner.

Versus

1. The Principal, J.N. Government Engineering College, Sunder Nagar, District Mandi, H.P. (Principal Employer).

2. M/s Nuvision Commercial Escorts Services, Ashirwad Sadan, Highway Heaven, Mehli, Shimla (Contractor) . . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: None
For the Respondent No.1	: Sh. S.S.Kaundal, Dy. D.A.
For the Respondent No.2	: None

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Liyakat Ali, President J.L. Nehru Engineering College Workers Union, O/o House No. 339/4, Salah, P.O. Bhojpur, Tehsil Sunder Nagar, District Mandi, H.P. and other workers *w.e.f.* 31-01-2015 as alleged *vide* demand notice dated 19-02-2015 (copy enclosed) by (i) the Principal, J.N. Government Engineering College, Sunder Nagar, District Mandi, H.P. (Principal employer) (ii) M/s Nuvision Commercial Escorts Services, Ashirwad Sadan, Highway Heaven, Mehli, Shimla (contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workers are entitled to from the above employers/ Management?”

2. The case was listed for filing of statement of claim on behalf of the petitioner and other workmen for today but, however, neither the petitioner and other workmen nor their counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due knowledge of the date of hearing, petitioner and other workmen had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section-2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under-section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workmen nor their counsel have put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner and other workmen to plead and prove on record that the termination of their services *w.e.f.* 31-01-2015 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner and other workmen. At the risk of repetition the petitioner/workmen had not put in appearance before this Tribunal. In this view of the matter, the petitioner and other workmen are not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of April, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

SPECIFIC NOTIFICATION**FINANCE DEPARTMENT****NOTIFICATION***Shimla-2, the 3rd January, 2020*

No. Fin-2-C-(12)-1/2019 (II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of 15-year tenure for an aggregate amount of ₹ 500.00 crore (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called Specific Notification) as also the terms and conditions specified in the General Notification No.Fin-2-C(12)-11/2003, dated July 20, 2007 of Government of Himachal Pradesh.

Object of the loan

1. (i) The proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293 (3) of the Constitution of India.

Method of Issue

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003, dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the yield based auction under multiple price formats.

Allotment to Non-Competitive Bidders

3. The Government Stock upto 10% of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1% of the notified amount for a single bid as per the Revised Scheme for Non-Competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on January 7, 2020. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) System as stated below on January 7, 2020.
 - (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 12.00 P.M.
 - (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 11.30 A.M.

Result of the Auction

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on January 8, 2020.

Method of Payment

6. Successful bidders will make payments on January 8, 2020 before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure

7. The Stock will be of 10 -year tenure. The tenure of the Stock will commence on January 8, 2020.

Date of Repayment

8. The loan will be repaid at par on January 8, 2035.

Rate of Interest

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on July 8 and January 8.

Eligibility of Securities

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

*Principal Secretary to the Government of Himachal Pradesh,
Finance Department.*

राजस्व विभाग

अधिसूचना

शिमला-2, 31 दिसम्बर, 2019

संख्या: राजस्व-घ (एफ) 4-5/2019(कांगड़ा).—हिमाचल प्रदेश के राज्यपाल की यह राय है कि उप-तहसील हरिपुर, जिला कांगड़ा का दर्जा बढ़ाकर तहसील कर दिया जाये, ताकि सम्बद्ध लोगों को बेहतर सेवाएं उपलब्ध करवाई जा सकें और बेहतर प्रशासनिक नियंत्रण हो सकें;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का अधिनियम संख्यांक 6) की धारा 6 और रजिस्ट्रीकरण अधिनियम, 1908 (1908 का अधिनियम संख्यांक 16) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित पटवार वृत्तों से गठित जिला कांगड़ा, हिमाचल प्रदेश की उप-तहसील हरिपुर का दर्जा बढ़ाकर तहसील का करते हैं।

तहसील का नाम	उप-मण्डल का नाम	जिला	मुख्यालय	सम्मिलित पटवार वृत्त
हरिपुर	देहरा	कांगड़ा	हरिपुर	1. हरिपुर 2. बगोली 3. खैरियां 4. भरंदू 5. वनखण्डी 6. त्रिपल 7. विलासपुर 8. गुलेर 9. नन्दपुर 10. सकरी 11. धार 12. छन्दुआ

आदेश द्वारा,
ओंकार चन्द शर्मा,
प्रधान सचिव एवं वित्तायुक्त (राजस्व)।

[Authoritative English text of this Department Notification No. Rev.-D(F)4-5/2019-(Kangra) dated 31-12-2019 as required under clause (3) of Article 348 of the Constitution of India].

REVENUE DEPARTMENT

NOTIFICATION

Shimla-2, the 31st December, 2019

No. Rev-D(F) 4-5/2019-(Kangra).—WHEREAS, the Governor of Himachal Pradesh is of the opinion that the status of Sub-Tehsil Haripur, District Kangra may be upgraded to that of Tehsil so as to provide better services to the concerned people and to have better administrative control;

NOW, THEREFORE, in exercise of the powers conferred by Section 6 of the Himachal Pradesh Land Revenue Act, 1954 (Act No. 6 of 1954) and Section 5 of the Registration Act, 1908 (Act No. 16 of 1908), the Governor of Himachal Pradesh is pleased to upgrade the status of Sub-Tehsil Haripur to that of Tehsil in District Kangra, Himachal Pradesh, consisting of following Patwar circles:—

Name of the Tehsil	Name of Sub-Division	District	Headquarter	Patwar Circles Included
Haripur	Dehra	Kangra	Haripur	1. Haripur 2. Bagoli 3. Khairian 4. Bhrandu 5. Bankhandi 6. Tripal 7. Vilaspur 8. Guler

				9. Nandpur 10. Sakri 11. Dhar 12. Chhandua
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By order,
ONKAR CHAND SHARMA,
Principal Secretary (Revenue).

In the Court of Assistant Collector, IInd Grade, Kupvi, District Shimla (H. P.)

Shri Kanwar Sandeep Samta s/o Shri Devender Samta, r/o Village Baggi, P.O. Charoli,
Tehsil Kupvi, District Shimla, Himachal Pradesh .. *Applicant.*

Versus

General Public

.. *Respondent.*

Subject.—Application u/s 35 to 38 of H.P. Land Revenue Act, 1954 for correction of name in revenue record.

Whereas, the applicant Shri Kanwar Sandeep Samta s/o Shri Devender Samta, r/o Village Baggi, P.O. Charoli, Tehsil Kupvi, District Shimla, Himachal Pradesh has filed an application in this court alongwith copies of Adhar Card, Family Nakal Copy and Nakal Jamabandi stated that my and my Father name has been recorded in the revenue record as "Sandeep s/o Devender Singh" wrongly in place of "Kanwar Sandeep Samta s/o Shri Devender Samta" and requested to correct of his name in revenue record as " Kanwar Sandeep Samta s/o Shri Devender Samta ".

Hence, this proclamation is issued to the general public if they have any objection regarding correction of my and my Father name in the revenue record as Kanwar Sandeep Samta s/o Shri Devender Samta instead of "Sandeep s/o Devender Singh" may file their claim/objections before this court within a period of one month from the publication of this notice in the Govt. Gazette failing which necessary orders will be passed.

Issued under my signature and seal of the court on.....

Seal.

Sd/-
*Assistant Collector, IInd Grade, Kupvi,
District Shimla (H. P.).*

In the Court of Assistant Collector, IInd Grade, Kupvi, District Shimla (H. P.)

Smt. Gangti Devi w/o Jeet Singh, r/o Village Banah, P.O. Kanda Banah, Tehsil Kupvi,
District Shimla, Himachal Pradesh .. *Applicant.*

Versus

General Public

.. *Respondent.*

Subject.—Application u/s 35 to 38 of H.P. Land Revenue Act, 1954 for correction of name in revenue record.

Whereas, the applicant Smt. Gangti Devi w/o Jeet Singh, r/o Village Banah, P.O. Kanda Banah, Tehsil Kupvi, District Shimla, Himachal Pradesh has filed an application in this court alongwith copies of Adhar Card, Family Nakal Copy and Nakal Jamabandi stated that her name has been recorded in the revenue record as "Durgi Devi" wrongly in place of "Gangti Devi" and requested to correct of her name in revenue record as " Gangti Devi ".

Hence, this proclamation is issued to the general public, if they have any objection regarding correction of my name in the revenue record as "Gangti Devi" instead of "Durgi Devi" may file their claims/objections before this court within a period of one month from the publication of this notice in the Govt. Gazette, failing which necessary orders will be passed.

Issued under my signature and seal of the court on.....

Seal.

Sd/-
Assistant Collector, IInd Grade, Kupvi,
District Shimla (H. P.).

In the Court of Assistant Collector, IInd Grade, Kupvi, District Shimla (H. P.)

Sh. Shyam Singh s/o Jaiya, r/o Village Jhokar, P.O. Jhokar, Tehsil Kupvi, District Shimla, Himachal Pradesh
.. Applicant.

Versus

General Public

.. Respondent.

Subject.—Application u/s 35 to 38 of H.P. Land Revenue Act, 1954 for correction of name in revenue record.

Whereas, the applicant Sh. Shyam Singh s/o Jaiya, r/o Village Jhokar, P.O. Jhokar, Tehsil Kupvi, District Shimla, Himachal Pradesh has filed an application in this court alongwith copies of Adhar Card, Family Nakal Copy and Nakal Jamabandi stated that his name has been recorded in the revenue record as "Shamu" wrongly in place of "Shyam Singh" and requested to correct of his name in revenue record as "Shyam Singh".

Hence, this proclamation is issued to the general public, if they have any objection regarding correction of my name in the revenue record as "Shyam Singh" instead of "Sh. Shamu" may file their claims/objections before this court within a period of one month from the publication of this notice in the Govt. Gazette, failing which necessary orders will be passed.

Issued under my signature and seal of the court on.

Seal.

Sd/-
Assistant Collector, IInd Grade, Kupvi,
District Shimla (H. P.).

In the Court of Assistant Collector, IInd Grade, Kupvi, District Shimla (H. P.)

Sh. Nain Singh s/o Bhalku, r/o Village Okhadi, P.O. Kupvi, Tehsil Kupvi, District Shimla,
Himachal Pradesh . . Applicant.

Versus

General Public

.. Respondent.

Subject.—Application u/s 35 to 38 of H.P. Land Revenue Act, 1954 for correction of name in revenue record.

Whereas, the applicant Sh. Nain Singh s/o Bhalku, r/o Village Okhadi, P.O. Kupvi, Tehsil Kupvi, District Shimla, Himachal Pradesh has filed an application in this court alongwith copies of Adhar Card, Family Nakal Copy and Nakal Jamabandi stated that my and my Father name has been recorded in the revenue record as "Sh. Nainu s/o Jharu" wrongly in place of "Sh. Nain Singh s/o Shri Bhalku" and requested to correct of his name in revenue record as " Sh. Nain Singh s/o Bhalku ".

Hence, this proclamation is issued to the general public if they have any objection regarding correction of my and my Father name in the revenue record as "Sh. Nain Singh s/o Bhalku" instead of "Sh. Nainu s/o Jharu" may file their claim/objections before this court within a period of one month from the publication of this notice in the Govt. Gazette failing which necessary orders will be passed.

Issued under my signature and seal of the court on.....

Seal.

Sd/-

Assistant Collector, IInd Grade, Kupvi,
District Shimla (H. P.).

**In the Court of Shri Neeraj Gupta, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Smt. Kalsi Devi w/o Shri Prem Bahadur, r/o Village Lagru, P.O. Shoghi, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

.. Respondent.

Whereas Smt. Kalsi Devi w/o Shri Prem Bahadur, r/o Village Lagru, P. O. Shoghi, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the name date of birth of her son named Rahul s/o Smt. Kalsi Devi w/o Shri Prem Bahadur, r/o Village Lagru, P. O. Shoghi, Tehsil and District Shimla, Himachal Pradesh. in the record of Secy., Birth and Death, Gram Panchayat Lagru, Shoghi, Tehsil & District Shimla.

Sl. No.	Name of the family member	Relation	Date of birth
1.	Rahul	son	22-12-1997

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name of date of Birth of above named in the record of Gram Panchayat Lagru, Shoghi, Tehsil & District Shimla may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 26-12-2019 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla.*

**In the Court of Sh. Arun Kumar, Executive Magistrate, Tehsil Nerwa,
District Shimla (H. P.)**

Sh. Balak Ram s/o Sh. Parsa Ram, r/o Village Gianh, P.O. Gianh, Tehsil Nerwa, District Shimla, H.P. . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Balak Ram s/o Sh. Parsa Ram, r/o Village Gianh, P.O. Gianh, Tehsil Nerwa, District Shimla, H.P. has preferred an application to the undersigned for registration of name of his Son namely Mr. Paras whose date of birth (13-03-2005) in the Gram Panchayat Manu Bhabiya, Tehsil Nerwa, District Shimla, H.P.

Therefore by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 22-01-2020 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 21-12-2019.

Seal.

ARUN KUMAR,
*Executive Magistrate,
Tehsil Nerwa, District Shimla (H.P.).*

ब अदालत श्री चन्द्र मोहन ठाकुर, कार्यकारी दण्डाधिकारी, जुब्बल, जिला शिमला, हिमाचल प्रदेश

श्री विक्रान्त घेजटा पुत्र श्री बरीन्दर सिंह घेजटा, निवासी ग्राम पुराना जुब्बल, डाकघर व तहसील जुब्बल, जिला शिमला, हि० प्र० . . . प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री विक्रान्त घेजटा पुत्र श्री बरीन्दर सिंह घेजटा, निवासी ग्राम पुराना जुब्बल, डाकघर व तहसील जुब्बल, जिला शिमला, हि० प्र० का प्रार्थना-पत्र जो अतिरिक्त जिला रजिस्ट्रार जन्म एवं मृत्यु

शिमला जिला शिमला के माध्यम से इस कार्यालय में प्राप्त हुआ है जिसमें आग्रह किया गया है कि प्रार्थी के पुत्र सूर्य विक्रान्त सिंह घेजटा की जन्म तिथि 23-02-2011 है जिसका पंजीकरण ग्राम पंचायत जय पीड़ी माता जुब्बल के अभिलेख में दर्ज नहीं है, इसलिए प्रार्थी अब अपने पुत्र का नाम व जन्म तिथि सम्बन्धित पंचायत के रिकार्ड में दर्ज करवाना चाहता है।

अतः इस इशतहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी को भी उपर्युक्त प्रार्थी के पुत्र सूर्य विक्रान्त सिंह घेजटा की जन्म तिथि के इन्द्राज ग्राम पंचायत जय पीड़ी माता जुब्बल में दर्ज करने बारे कोई भी उजर व एतराज हो तो वह दिनांक 15-01-2020 को प्रातः 10.00 बजे या इससे पूर्व किसी भी कार्य दिवस को अदालत हजा में हाजिर होकर लिखित व मौखिक एतराज प्रस्तुत करें। यदि उक्त तारीख तक कोई भी उजर व एतराज प्रस्तुत न हुआ तो यह समझा जाएगा कि प्रार्थी के पुत्र की जन्म तिथि पंजीकरण हेतु किसी को कोई आपत्ति नहीं है तथा ग्राम पंचायत जय पीड़ी माता जुब्बल को जन्म तिथि दर्ज करने के आदेश पारित किए जावेंगे।

आज दिनांक 16-12-2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

चन्द्र मोहन ठाकुर,
कार्यकारी दण्डाधिकारी,
जुब्बल, जिला शिमला (हि0 प्र0)।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील चड़गांव,
जिला शिमला, हि0 प्र0

श्री जगदीश पुत्र स्व0 श्री मोती राम

बनाम

आम जनता

उनवान मुकद्दमा.—जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 श्री जगदीश पुत्र स्व0 श्री मोती राम, निवासी गांव हडवाणी, तहसील चड़गांव, जिला शिमला, हि0 प्र0 ने दरखास्त गुजारी है कि वह अपने पिता स्व0 श्री मोती राम पुत्र पुत्र श्री नर दास की मृत्यु ग्राम पंचायत सिन्दासली खरशाली के जन्म एवं मृत्यु रजिस्टर में दर्ज करवाना चाहता है। प्रार्थी का कहना है कि वह किसी कारणवश अपने पिता की मृत्यु का पंजीकरण ग्राम पंचायत सिन्दासली के जन्म व मृत्यु रजिस्टर में दर्ज न करवा सका। प्रार्थी के पिता श्री मोती राम की मृत्यु की तिथि 19-11-2017 है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति या रिश्तेदार को कोई उजर व एतराज हो तो वह अपना एतराज असालतन या वकालतन दिनांक 06-01-2019 को प्रातः 10.00 बजे अदालत में हाजिर आकर पेश कर सकता है। उक्त तारीख के बाद कोई भी एतराज स्वीकार नहीं किया जाएगा और उक्त प्रार्थी के पिता की मृत्यु का पंजीकरण ग्राम पंचायत सिन्दासली के रिकार्ड में दर्ज करने के आदेश पारित कर दिये जाएंगे।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
चड़गांव, जिला शिमला (हि0 प्र0)।

ब अदालत नरोत्तम लाल गौर सहायक समाहर्ता प्रथम श्रेणी चड़गांव, जिला शिमला, हि0 प्र0

श्री खीणू पुत्र श्री मस्तु

बनाम

दिनेश कुमार

विषय.—दुरुस्ती कब्जा काश्त राजस्व कागजात माल।

सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि एक दरखास्त बराए करने दुरुस्त कब्जा काश्त भूमि खाता खतौनी नं0 71/124 हाल खसरा नं0 494, 495, 505, 506, 864, कित्ता 5, रकबा तादादी

0-20-78 वाका महाल गांवसारी की श्री खीणू पुत्र श्री मस्तु, निवासी गांव गांवसारी, तहसील चढ़गांव, जिला शिमला, हि0 प्र0 ने दरखास्त गुजारी है जिसे बराए छानबीन क्षेत्रीय कानूनगो चढ़गांव को भेजा गया था। क्षेत्रीय कानूनगो चढ़गांव ने अपनी विस्तृत रिपोर्ट पेश की है जिसके मुताबिक उक्त भूमि के खाना काशत में दिनेश कुमार पुत्र ठाकूर सैन, निवासी गांवसारी कर कब्जा दर्ज हुआ है जोकि गलत है उपरोक्त खसरा नं0 864 में दिनेश कुमार का मौका पर कब्जा है। बाकि सभी खसरा नं0 पर खीणू पुत्र श्री मस्तु का मौका पर कब्जा पाया गया। इस अदालत से बार-बार समन करने के पश्चात् भी प्रतिवादी श्री दिनेश कुमार पुत्र ठाकूर सैन अदालत में हाजिर नहीं हो रहा है।

अतः उपरोक्त के मद्देनजर श्री दिनेश कुमार पुत्र ठाकूर सैन को इस इशतहार के माध्यम से अन्तिम मौका देते हुए सूचित किया जाता है कि आप दिनांक 06-01-2019 को असालतन व वकालतन अदालत हजा में प्रस्तुत होवें अन्यथा आपके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर उपरोक्त भूमि के खाना काशत में खीणू पुत्र श्री मस्तु का कब्जा दर्ज करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 16-12-2019 को मेरे हस्ताक्षर व मोहर सहित जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
चढ़गांव, जिला शिमला, हि प्र0।

ब अदालत नरोतम लाल गौर, सहायक समाहर्ता प्रथम श्रेणी चढ़गांव, जिला शिमला, हि0 प्र0

श्री बालक राम पुत्र दर्शन दास

बनाम

आम जनता

विषय.—नाम दुरुस्ती राजस्व कागजात।

सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि एक दरखास्त बराए करने नाम दुरुस्ती श्री बालक राम कुमार पुत्र स्व0 श्री दर्शन दास, निवासी गास्कवाड़ी, तहसील चढ़गांव, जिला शिमला, हि0प्र0 ने इस अदालत में दरखास्त गुजारी है जिसे बराए छानबीन क्षेत्रीय कानूनगो चढ़गांव को भेजा गया था। क्षेत्रीय कानूनगो चढ़गांव ने अपनी विस्तृत रिपोर्ट पेश की है जिसके मुताबिक प्रार्थी श्री बालक राम का नाम राजस्व कागजात चक गोस्कवाड़ी व अटगांव, मलक राम पुत्र दर्शन दास दर्ज है जोकि गलत है। प्रार्थी का असली नाम बालक राम है जैसा कि प्रार्थी के आधार कार्ड, शैक्षणिक दस्तावेजों, नकल परिवार रजिस्टर व प्रार्थी द्वारा दायर शपथ-पत्र से साबित होता है।

अतः उपरोक्त के मद्देनजर आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम की दुरुस्ती से कोई एतराज हो तो वह अपना एतराज असालतन व वकालतन दिनांक 10-01-2019 को तहसील कार्यालय में आकर अपना एतराज दर्ज करवा सकता है।

आज दिनांक 16-12-2019 को मेरे हस्ताक्षर व मोहर सहित जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
चढ़गांव, जिला शिमला, हि प्र0।